Office - Supreme Court, U.S.
FILED
JUN 6 1957
JOHN T. FEY, Clerk

IN THE

# Supreme Court of the United States

October Term, 1956

No. ~~1068~~ 169

THE STATE OF FLORIDA, *ex rel.*,
VIRGIL D. HAWKINS,

*Petitioner,*

*v.*

THE BOARD OF CONTROL, *et al.*

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

ROBERT L. CARTER,
THURGOOD MARSHALL,
*Counsel for Petitioner.*

WILLIAM E. TAYLOR,
*of Counsel.*

# INDEX


| | PAGE |
|---|---|
| Petition for Writ of Certiorari | 1 |
| Opinion Below | 1 |
| Jurisdiction | 2 |
| Questions Presented | 3 |
| Statement | 3 |
| Reasons for Allowance of the Writ | 6 |
| Conclusion | 8 |
| APPENDIX—Opinion of the Supreme Court of Florida | 9 |


## Table of Cases Cited


| | |
|---|---|
| Betts v. Brady, 316 U. S. 455 | 2 |
| Brown v. Board of Education, 349 U. S. 294 | 6 |
| Buchanan v. Warley, 245 U. S. 60 | 6 |
| Cole v. Arkansas, 338 U. S. 345 | 2 |
| Department of Banking v. Pink, 317 U. S. 264 | 2 |
| Ex parte Endo, 323 U. S. 283 | 7 |
| Jones National Bank v. Yates, 240 U. S. 541 | 2 |
| Magwire v. Tyler, 17 Wall. 253 | 2, 7 |
| Martin v. Hunter's Lessee, 1 Wheat. 304 | 2, 7 |
| McCulloch v. Maryland, 4 Wheat. 316 | 2 |
| McLaurin v. Oklahoma State Regents, 339 U. S. 637 | 5, 6 |
| Morgan v. Commonwealth of Virginia, 328 U. S. 373 | 7 |
| Osborn v. The Bank of the United States, 9 Wheat. 738 | 6 |

PAGE

Parker v. Illinois, 333 U. S. 570 ..... 2

Poindexter v. Greenhow, 114 U. S. 270 ..... 2

Republic Natural Gas Co. v. Oklahoma, 334 U. S. 62 ..... 2

Richfield Oil Corp. v. State Board of Equalization, 329 U. S. 69 ..... 2

Sipuel v. University of Oklahoma, 332 U. S. 631 ..... 5, 6

Stanley v. Schwalby, 162 U. S. 255 ..... 2

Sweatt v. Painter, 339 U. S. 629 ..... 5, 6

Urie v. Thompson, 337 U. S. 163 ..... 2

Williams v. Bruffy, 102 U. S. 248 ..... 2, 7

Williams v. Georgia, 349 U. S. 375 ..... 6

Yick Wo v. Hopkins, 118 U. S. 356 ..... 7

## Statutes Cited

Title 28, United States Code:

Section 1257(3) ..... 2

Section 1651(a) ..... 1, 2, 8

Section 2106 ..... 1, 2, 8

Constitution of the United States:

Fourteenth Amendment ..... 2

## Other Authorities Cited

Hart and Wechsler, The Federal Courts and the Federal System 240 (1st ed. 1953) ..... 2

1 Warren, The Supreme Court in United States History 433 (1922) ..... 7

IN THE

# Supreme Court of the United States

October Term, 1956

No.

---

THE STATE OF FLORIDA, *ex rel.*,
VIRGIL D. HAWKINS,
*Petitioner.*

v.

THE BOARD OF CONTROL, *et al.*

---

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Florida entered in the above-entitled cause on March 8, 1957.

Further, petitioner prays that pursuant to Title 28, United States Code, Sections 1651(a) and 2106, this Court enter the judgment that the Supreme Court of Florida should have entered after this Court vacated and remanded a prior judgment of the Supreme Court of Florida on March 12, 1956.

### Opinion Below

The opinion of the court below last entered in this cause and now before this Court on this petition for writ of certiorari was entered on March 8, 1957, and is reported at 93 So. 2d 354. It is printed in the Appendix hereto at pp. 9-33.

## Jurisdiction

Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1257 (3). Petitioner asserted rights and privileges guaranteed by the Fourteenth Amendment to the Constitution of the United States and throughout the long history of this litigation, those rights have been repeatedly asserted and preserved. This Court will issue a writ of certiorari to resolve doubts about whether its mandate in an earlier decision has been obeyed by the state court. *Cole* v. *Arkansas*, 338 U. S. 345, 347.

The judgment below was final, *Betts* v. *Brady*, 316 U. S. 455; cf. *Republic Natural Gas Co.* v. *Oklahoma*, 334 U. S. 62, 68; *Parker* v. *Illinois*, 333 U. S. 570, 576-577; and is reviewable by this Court notwithstanding any designation given it by the state court, *Department of Banking* v. *Pink*, 317 U. S. 264, 268; *Richfield Oil Corp.* v. *State Board of Equalization*, 329 U. S. 69, 72.

This Court has jurisdiction under Title 28, United States Code, Sections 1651(a) and 2106 to enter its own judgments, and in the past has issued such judgments, especially in situations where a state court has failed to act in conformity with a prior mandate of this Court. *Martin* v. *Hunter's Lessee*, 1 Wheat. 304; *McCulloch* v. *Maryland*, 4 Wheat. 316, 437; *Maguire* v. *Tyler*, 17 Wall. 253, 289-290; *Williams* v. *Bruffy*, 102 U. S. 248; cf. *Stanley* v. *Schwalby*, 162 U. S. 255, 280-282. See Hart and Wechsler, *The Federal Courts and the Federal System* 240 (1st ed. 1953).[1]

---

[1] Similarly, in a number of cases which did not involve any violation of a prior mandate, this Court has acted in aid of jurisdiction by remanding the case to the state court with orders to enter a specific judgment for one of the parties. Stanley v. Schwalby, 162 U. S. 255; Poindexter v. Greenhow, 114 U. S. 270, 306; Jones v. National Bank v. Yates, 240 U. S. 541, 563; Urie v. Thompson, 337 U. S. 163, 196.

## Questions Presented

May the court below refuse to issue a writ of mandamus ordering petitioner's admission to the University of Florida Law School on the ground that to do so at this time "would tend to work a serious public mischief?"

Did the court below, in refusing to issue the writ for the reasons stated, act in violation of the mandate issued by this Court on March 12, 1956?

Should this Court enter its own judgment ordering the immediate admission of petitioner to the University of Florida in order to secure compliance with its mandate of March 12, 1956?

## Statement

The cause originated in April, 1949. Petitioner was one of four applicants who sought admission to the professional and graduate schools of the University of Florida. Petitioner seeks entrance to the school of law. On May 13, 1949, petitioner was advised that his admission to the University of Florida was prohibited because he was a Negro, and the Board of Control offered to pay his tuition to an institution of his choice outside the state. Petitions for alternative writs of mandamus were filed in the Supreme Court of the State of Florida and were granted (R. 8).

On August 1, 1950, the court below entered its first judgment and ruled that the Board of Control, in ordering the establishment of a school of law and other graduate courses at Florida A: and M: College for Negroes, and in offering to provide out-of-state scholarship aid to petitioner pending establishment of these segregated educational facilities, had fully satisfied the state's constitutional obligation to furnish equal educational opportunities to petitioner and other Negroes similarly situated. The court

refused to enter a final order but retained jurisdiction in order to permit the parties to seek further relief at some later date (R. 69-70). The opinion is reported at 47 So. 2d 608. On May 16, 1951, petitioner filed a motion for peremptory writ of mandamus (R. 72). On June 15, 1951, the court below denied the peremptory writ (R. 75). This opinion is reported at 53 So. 2d 116. Petitioner filed a petition for writ of certiorari in this Court. This Court refused to grant certiorari on the ground that no final judgment had been entered, 342 U. S. 877.

On June 7, 1952, petitioner filed a motion for peremptory writ and for final judgment in the court below (R. 83). On August 1, 1952, the Supreme Court of Florida entered final judgment in this case denying petitioner's motion for peremptory writ, quashing the alternative writs of mandamus previously issued and dismissing the cause (R. 96). This opinion is reported at 67 So. 2d 162. When the cause was brought here a second time, this Court granted the petition for writ of certiorari, vacated the judgment below, and remanded the cause for "consideration in the light of the Segregation Cases decided May 17, 1954 . . . and conditions that now prevail." 347 U. S. 971.

On July 31, 1954, the Supreme Court of Florida ordered the petitioner to amend his petition so as to place before the court the issues raised by the original petition in the light of the *School Segregation Cases*, decided May 17, 1954, and conditions that now prevail (R. 105). On September 30, 1954, an amended petition for alternative writ of mandamus was filed in the court below (R. 108), and thereafter, an amended answer was filed by respondents (R. 97)—all pursuant to the court's instruction. On October 19, 1955, a new judgment was entered, declaring the exclusion of petitioner from the University of Florida solely because of his race unconstitutional, but appointing a commissioner to take evidence pursuant to which the

court below would determine when and under what circumstances petitioner might be admitted to the University of Florida in the indeterminate future (R. 142). This, the fourth opinion, is reported at 83 So. 2d 20.

Although the judgment below was not final, petitioner sought in this Court the issuance of a writ of certiorari or one of the common law writs. This petition was denied, but at the same time this Court recalled and vacated its prior order of May 24, 1954, and entered a new order, remanding the cause. Citing *McLaurin* v. *Oklahoma State Regents*, 339 U. S. 637; *Sweatt* v. *Painter*, 339 U. S. 629; and *Sipuel* v. *University of Oklahoma*, 332 U. S. 631, this Court stated that there was no reason for delay and that petitioner was entitled to prompt admission to the law school under the rules and regulations applicable to other qualified candidates, 350 U. S. 413, reh. denied 351 U. S. 915.

On May 25, 1956 the Commissioner, appointed by the court below on October 19, 1955 to report when conditions would warrant petitioner's admission, submitted his report (R. 169).

On June 20, 1956, petitioner again sought in the court below the issuance of a peremptory writ of mandamus ordering his admission to law school (R. 134). Hearing was held in the court below on petitioner's motion on September 4, 1956. On March 5, 1957, the court below denied a motion made by respondent to refer the cause to a commissioner (R. 674). On March 8, 1957, nearly a year after this Court entered its last order, the court below entered the present judgment, denying petitioner's motion for a peremptory writ (R. 676).

To support its decision, the court reiterated the ground stated in its opinion of October 19, 1955, that mandamus was a discretionary writ which the court could refuse to issue where to do so "would tend to work a serious public mischief." In concluding that this was the case here, the

court relied upon evidence adduced by respondent in hearings held by the commissioner appointed by the court in its decision of October 19, 1955. The court held that it was not precluded by this Court's order of March 12, 1956, from denying petitioner's motion on the grounds stated. Finally, the court below ruled that petitioner might renew his motion "when he is prepared to present testimony showing that his admission can be accomplished without doing great public mischief." This opinion is reported at 93 So. 2d 354.

## Reasons for Allowance of the Writ

1. Petitioner is entitled to an order which will effectually secure his immediate admission to the University of Florida law school. More than 7 years have elapsed since petitioner first sought relief in the court below to obtain admission to law school and that relief has yet to be granted. The nature and extent of petitioner's constitutional right to an unsegregated legal education has been clear since this Court decided *Sweatt* v. *Painter*, 339 U. S. 629, and *McLaurin* v. *Oklahoma State Regents*, 339 U. S. 637 in 1950. Petitioner's right is "personal and present," and he is entitled to prompt admission under the rules and regulations applicable to other qualified candidates. *Sweatt* v. *Painter*, *supra*; *Sipuel* v. *Board of Regents of the University of Oklahoma*, 332 U. S. 631, 633; cf. *McLaurin* v. *Oklahoma State Regents*, *supra*. A court may not refuse to give effect to rights protected by the Constitution on the ground that it is simply exercising its discretion to decline to afford relief. See *e.g.*, *Williams* v. *Georgia*, 349 U. S. 375, 383; *Osborn* v. *The Bank of the United States*, 9 Wheat. 738, 866. Neither community opposition, nor threats of violence and hostility can excuse a denial of constitutional rights or a delay in vindicating them. *Buchanan* v. *Warley*, 245 U. S. 60, 80; *Brown* v. *Board of Education*, 349 U. S.

294, 300; cf. *Morgan* v. *Commonwealth of Virginia*, 328 U. S. 373, 380; *Ex parte Endo*, 323 U. S. 283, 302; *Yick Wo* v. *Hopkins*, 118 U. S. 356, 374. Yet the court below persists in its refusal to afford relief to petitioner for the very reasons declared judicially non-cognizable by this Court in an unbroken line of decisions.

2. The judgment of the court below is in direct conflict with the order issued by this Court on March 12, 1956, in this case. Even if it be assumed, *arguendo*, that a state court is free to seek new independent grounds for decision after the issuance of a mandate by this Court, that is not the case here. By the court's own admission (R. 680) all of the grounds now advanced by it for denying the writ sought by petitioner were contained in its opinion of October 19, 1955, and thus were necessarily before this Court when the order of March 12, 1956, was issued. In that order, this Court said, "As this case involves the admission of a Negro to a graduate professional school, there is no reason for delay. He is entitled to prompt admission under the rules and regulations applicable to other qualified candidates." 350 U. S. 413. In the face of this, the court below continues to insist that the reasons for delay that it urged prior to March 12, 1956, are still valid.

3. Not since the early days of the Republic has the authority of this Court to interpret the Constitution been challenged in so flagrant a manner by a court of inferior jurisdiction. In those early tests, this Court met challenges to its authority patiently yet firmly by entering judgments to effectuate its opinions. See *Martin* v. *Hunter's Lessee*, *supra*; *Maguire* v. *Tyler*, *supra*; *Williams* v. *Bruffy*, *supra*. Authorities attribute the durability of the Union in large part to the firm manner in which this Court met these threats. See *e.g.*, 1 Warren, *The Supreme Court in United States History*, 433, 450-451 (1922). Petitioner seeks only to exercise rights guaranteed by the Constitution and declared

in unmistakable terms by this Court. All efforts by petitioner to secure protection of these rights in the court below have failed, and there is no indication that such protection is forthcoming in the foreseeable future. Thus, petitioner's only recourse is an appeal to this Court to grant this petition and to exercise its authority under Title 28, United States Code, Sections 1651(a) and 2106 and enter its own order directly to the Board of Control ordering petitioner's admission to the University of Florida.

## CONCLUSION

**Wherefore, for the reasons hereinabove stated, it is respectfully submitted that this petition for writ of certiorari should be granted and that this Court should enter its own judgment ordering petitioner's admission without further delay to the University of Florida Law School.**

Respectfully submitted,


ROBERT L. CARTER,
THURGOOD MARSHALL,
*Counsel for Petitioner.*

WILLIAM L. TAYLOR,
*of Counsel.*

## APPENDIX

### (Opinion of the Supreme Court of Florida Filed March 8, 1957)

ROBERTS, *J.*:

This litigation is concerned with the rights of the Relator, a Negro, to be admitted to the University of Florida Law School, provided he meets the entrance requirements applicable to all students. The history of the litigation is set forth in *State ex rel. Hawkins* v. *Board of Control* (Fla. 1955) 83 So. 2d 20, our latest decision in the controversy, referred to hereafter as the "1955 decision."

Our 1955 decision was entered in response to the mandate of the United States Supreme Court in *State ex rel. Hawkins* v. *Board of Control* (May 1954) 347 U. S. 971, directing this court to reconsider its decision in *State ex rel. Hawkins* v. *Board of Control* (Fla. 1952) 60 So. 2d 162 (the "1952 decision" hereafter), "in the light of the Segregation Cases decided May 17, 1954, *Brown* v. *Board of Education*, etc. [347 U. S. 483] and conditions that now prevail." Since this court has held in a long line of decisions that it is bound by the decisions of the United States Supreme Court "construing the meaning and effect of acts of Congress and those provisions of the national Constitution which restrict the powers of the states," *Miami Home Milk Producers Ass'n* v. *Milk Control Board* (1936) 169 So. 541, 124 Fla. 797, we held in our 1955 decision, under the authority of *Brown* v. *Board of Education*, etc., *supra*, 347 U. S. 483, that the Relator could not be denied admission to the University of Florida Law School solely because of his race. In the exercise of our discretion, however, we decided to withhold the issuance of a peremptory writ of mandamus in the cause, pending a subsequent determination of law and fact as to the time when the Relator should be admitted to that institution; and the Honorable John A. H. Murphree, Resi-

dent Circuit Judge of the circuit in which the University is located, was appointed as the commissioner of this court to take testimony on behalf of the Relator and the Respondents, members of the Board of Control, relating to the factual issue. Our decision in this respect was based on two considerations, one a federal and the other a state ground: (1) the application to the controversy of the formula set out in the so-called "implementation decision," *Brown* v. *Board of Education of Topeka*, 349 U. S. 295; and (2) the exercise of our traditional power as a state court to decline to issue the extraordinary writ of mandamus if to do so would tend to work a serious public mischief. *City of Safety Harbor* v. *State* (1939) 136 Fla. 636, 187 So. 173; *State ex rel. Carson* v. *Bateman*, 131 Fla. 625, 180 So. 22; *State ex rel. Gibson* v. *City of Lakeland*, 126 Fla. 342, 171 So. 227; *State ex rel. Bottome* v. *City of St. Petersburg*, 126 Fla. 233, 170 So. 730.

The Relator then filed a petition for certiorari in the United States Supreme Court to review our 1955 decision on the ground that the decision in the *Brown* case, 347 U. S. 483, did not apply to "State junior colleges, colleges, graduate and professional schools." The court disposed of this petition by a short but not entirely unambiguous opinion, dated March 12, 1956, reading as follows:

> "PER CURIAM.
>
> "The Petition for certiorari is denied.
>
> "On May 24, 1954, we issued a mandate in this case to the Supreme Court of Florida. 347 U. S. 971. We directed that the case be reconsidered in light of our decision in the Segregation Cases decided May 17, 1954, *Brown* v. *Board of Education*, 347 U. S. 483. In doing so, we did not imply that decrees involving graduate study present the problems of public elementary and secondary schools. We had theretofore, in three cases, ordered the admission of Negro applicants to graduate schools without dis-

crimination because of color. *Sweatt* v. *Painter*, 339 U. S. 629; *Sipuel* v. *Board of Regents of the University of Oklahoma*, 332 U. S. 631; cf. *McLaurin* v. *Oklahoma State Regents for Higher Education*, 339 U. S. 637. Thus, our second decision in the Brown case, 349 U. S. 294, which implemented the earlier one, had no application to a case involving a Negro applying for admission to a state law school. Accordingly, the mandate of May 24, 1954, is recalled and is vacated. In lieu thereof, the following order is entered:

"PER CURIAM: The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded on the authority of the Segregation Cases decided May 17, 1954, *Brown* v. *Board of Education*, 347 U. S. 483. As this case involves the admission of a Negro to a graduate professional school, there is no reason for delay. He is entitled to prompt admission under the rules and regulations applicable to other qualified candidates. *Sweatt* v. *Painter*, 339 U. S. 629; *Sipuel* v. *Board of Regents of the University of Oklahoma*, 332 U. S. 631; cf. *McLaurin* v. *Oklahoma State Regents for Higher Education*, 339 U. S. 637."

The cause is now before this court on the Relator's motion for a peremptory writ of mandamus to compel the Respondents to admit him to the University of Florida Law School, his contention being that the above-quoted opinion entitles him to immediate admission, provided he is otherwise qualified, without regard to the outcome of the factual study which was in progress at the time of the filing of his motion and which has now been concluded.

There can be no doubt that, by revising its May 1954 mandate directed to our 1952 decision in the manner above noted, the Supreme Court of the United States neatly, albeit laconically, cut off the federal prop that supported, in part, our 1955 decision. But it will have been noted that the

opinion stated that "[t]he petition for certiorari is denied", presumably referring to our 1955 decision; and, this being so, our 1955 decision still stands, nonetheless firmly, on the *state* ground mentioned therein and referred to above.

Indeed, it is unthinkable that the Supreme Court of the United States would attempt to convert into a writ of right that which has for centuries at common law and in this state been considered a discretionary writ; nor can we conceive that that court would hold that the highest court of a sovereign state does not have the right to control the effective date of its own discretionary process. Yet, this would be the effect of the court's order, under the interpretation contended for by the Relator. We will not assume that the court intended such a result.

In what appears to be a progressive disappearance of State sovereignty, it is interesting to read certain decisions (among others) which the United States Supreme Court has handed down in recent months. See: *Railway Employees Dept., etc. et al. v. Hanson, et al.* (May 1956) — U. S. —, 100 L. Ed. (advance) p. 638, holding that a union shop agreement negotiated between certain railroads and certain organizations of employees of such railroads which had been authorized by an act of the Congress superseded the right-to-work provisions of the Constitution of the State of Nebraska and the state statutes enacted pursuant thereto; *Bantau George Rea v. United States of America* (January 1956) 350 U. S. 214, 100 L. Ed. (advance) p. 213, holding that it was within the power of the federal courts to enjoin an officer of the executive department of the federal government from testifying in a state court in a case involving a violation of a criminal statute of that state; *Commonwealth of Pennsylvania v. Steve Nelson* (April 1956) 350 U. S. 497, 100 L. Ed. (advance) p. 415, outlawing antisedition laws in 42 states, Alaska and Hawaii; *Griffin et al v. People of the State of Illinois* (April 1956) — U. S. —, 100 L. Ed. (advance) p. 483, requiring the states to finance appeals by penniless persons convicted of crimes; *Slochower v. Board of Higher*

*Education of the City of New York* (April 1956) 350 U. S. 551, 100 L. Ed. (advance) p. 449, limiting the power of states and cities to discharge public employees when they plead the Fifth Amendment against self-incrimination in duly authorized inquiries affecting the general welfare; *Browder et al. v. Gayle et als.*, 142 F. Supp. 707 (M. D. Ala. 1956), affirmed by the Supreme Court, 77 S. Ct. 145, holding invalid statutes and ordinances requiring the segregation of the white and colored races in motor buses operating in the City of Montgomery, Alabama.

It is a "consummation devoutly to be wished" that the concept of "states' rights" will not come to be of interest only to writers and students of history. Such concept is vital to the preservation of human liberties *now*. And whatever one's ideology may be—whether one is a strong defender of state sovereignty or an equally fervent advocate of centralized government—we think the great majority of persons would agree that if the death knell of this fundamental principle of Jeffersonian democracy is to be tolled, the bell should be rung by the people themselves as the Constitution contemplates. President Lincoln's words of warning are just as true today as they were almost a century ago, when he said in his first inaugural address on March 4, 1861:

> "If the policy of the government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court . . . the people will have ceased to be their own rulers, having to that extent practically resigned their government into the hands of that eminent tribunal."

And we do not feel it is amiss to refer to the following remarks made by George Washington in his "Farewell Address":

> "If, in the opinion of the people, the distribution or modification of the constitutional powers be in

> any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. *But let there be no change by usurpation;* for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed."

But we repeat that, despite these recent decisions, we cannot attribute to the Supreme Court an intention to abrogate the rule which denies to federal courts the right to regulate or control long-established rules of practice and procedure adopted by state courts for the administration of justice therein. Cf, *Naim* v. *Naim* (Va. 1956) 90 S. E. 2d 849, in which the Supreme Court of Appeals of Virginia declined to remand a cause to a lower court, as directed by mandate of the United States Supreme Court, because to do so "would be contrary to [the] fixed rules of practice and procedure" of the Virginia courts, as well as the statute law of that state. A motion to recall the mandate and to set the case down for oral argument upon the merits, or in the alternative, to recall and amend the mandate was denied by the United States Supreme Court for the reason that the decision above referred to, 90 S. E. 2d 849, "leaves the case devoid of a properly presented federal question." *Naim* v. *Naim* (March 12, 1956) — U. S. —, 100 L. Ed. (advance) p. 352. *A fortiori*, we cannot assume that the Supreme Court intended to deprive the highest court of an independent sovereign state of one of its traditional powers, that is, the right to exercise a sound judicial discretion as to the date of the issuance of its process in order to prevent a serious public mischief. As recently as June 4, 1956, in *United Automobile, Aircraft and Agricultural Implement Workers of America, et al.* v. *Wisconsin Employment Relations Board et al.*, — U. S. —, the Supreme Court recognized the "dominant interest" of a state in preventing violence. It there said: "The States are the natural guardians of the public against violence. It is the

local communities that suffer most from the fear and loss occasioned by coercion and destruction. We would not interpret an act of Congress to leave them powerless to avert such emergencies without compelling directions to that effect." We are cognizant of our duty to compel Relator's admission to the University of Florida Law School "without delay", if it is feasible to do so at this time; but we have an equally compelling duty to perform in respect to the public peace and a long-established state judicial procedure by which to perform it. We point out, additionally, that the Relator, having a choice between a federal and a state court, selected this court as the forum in which to try his cause; he thereby selected the rules of practice and procedure long established in this jurisdiction. We have no doubt that the Supreme Court intended that we should adhere to such procedure in the instant controversy. The Relator's contention in this respect cannot, therefore, be sustained.

We come now to the question of whether the facts, as developed under the guidance of this court's commissioner, require the immediate admission of the Relator to the University of Florida Law School, provided he meets the entrance requirements. It might be noted that the Relator had due notice and an opportunity to be heard at the hearings scheduled by the commissioner. He did not appear nor did he present any testimony in support of his right to immediate admission. Moreover, the history of this controversy leads us to believe that the Relator does not, in fact, have a genuine interest in obtaining a legal education. He was given an opportunity to secure a legal education outside this state under the Regional Education Plan, but declined; he was given an opportunity to attend the University of Florida Law School, temporarily, if law facilities were not available at the Florida Agricultural & Mechanical University, but declined; he was then given an opportunity to attend the law school at the Florida Agricultural & Mechanical University, but declined. And, as noted, he

was given an opportunity to appear before the court's commissioner and offer evidence in support of his right to immediate admission to the University of Florida Law School, but declined.

It should be noted that the Law School at the University of Florida is an integral part of that institution. A law student is not in a class separate and apart from all other University students—he is a University student just as much as those entering the engineering school or the educational school or the architectural school, and entitled to participate in all campus activities.

Against this background, we have considered the evidence adduced by the Respondents which, in the state of the record here, must constitute the basis for the exercise of our discretion in the matter. The factual material on file in this court reflects a prodigious amount of work by the commissioner and the Respondents or those acting in their behalf. It is not contended—nor could it be—that there was even a modicum of bias on the part of any person involved in the work of assembling the data here presented nor in the formulation of the questionnaires which were the basic media by which much of the information was obtained. The survey is completely objective and as accurate and comprehensive as the time available for the study would permit. The testimony of the witnesses shows no bias and reflects only a sincere desire to do what is best for all concerned.

The survey conducted under the guidance of the court's commissioner shows, among others, that a substantial number of students and a substantial number of the parents of students state that they expect to take action—which apparently is positive action—to persuade Negro students to leave the University or make it so unpleasant for them that they will move out of a dormitory room or out of a class or out of a cafeteria or otherwise stop using the facilities of the University of Florida, should integration occur. It was also shown that 41 percent of the parents of students

now in our white universities would cause them to drop out of those schools or transfer to another school; and that 62 percent of the parents of white 1956 high school graduates would send their children elsewhere than to our white state institutions, if we have enforced integration. There would be loss of revenue to our white institutions from grants, from activities on the part of the alumni of those institutions in support of their financial affairs, and from students moving out of dormitories (many of which are being paid for out of revenue certificates), if we have integration. Those institutions would lose the support of 52 percent of their alumni, if integration occurs, which would seriously impair the financial support to be expected from our state legislature. Integration would unquestionably result in the abandonment of substantially all of the graduate work now being offered at the Florida Agricultural & Mechanical University because it would be an unnecessary duplication of the same courses offered at the University of Florida or at Florida State University.

Our study of the results of the survey material to the question here, and other material evidence, leads inevitably to the conclusion that violence in university communities and a critical disruption of the university system would occur if Negro students are permitted to enter the state white universities at this time, including the Law School of the University of Florida, of which it is an integral part. This court has an opportunity to prevent the incidents of violence which are, even now, occurring in various parts of this country as a result of the states' efforts to enforce the Supreme Court's decision in the *Brown* case. We quote with approval that part of the language of Mr. Justice Hobson in his special concurring opinion in which he said "the testimony which was taken at the direction of this court by the Honorable John A. H. Murphree, and which is now before us for consideration, was not in the record when the Supreme Court of the United States said 'there is no reason for delay'. This testimony,

as well as the revealing incidents (of which we may take judicial notice) which have occurred since the repudiation of the 'separate but equal' doctrine, convinces me that the immediate admission of relator to the University of Florida College of Law would result in great public mischief." The homely expression, "An ounce of prevention is worth a pound of cure," is especially applicable to the situation here—involving, as it does, the public welfare of all our people.

In the exercise of what we sincerely believe to be sound judicial discretion, we have decided that the relator's motion for a peremptory writ should be denied, but without prejudice to the right of relator to renew his motion when he is prepared to present testimony showing that his admission can be accomplished without doing great public mischief. For the reasons stated, the entry of a final judgment is deferred until further order of the court.

It is so ordered.

THORNAL and O'CONNELL, *JJ.*, Concur.
TERRELL, *C.J.*, and HOBSON, *J.*, Concurs specially.
THOMAS and DREW, *JJ.*, Dissent.

---

TERRELL, *C.J.*, Concurring:

I concur in the opinion of Mr. Justice Roberts, particularly with that part relating to the power of this and other states to control their process when public mischief is imminent. This doctrine is all the more compelling when long settled rules relating to the administration of justice and the prevention of violence are brought in question. Historically, individuals, as well as states, have interposed action to thwart the inroads of Federal authority not so much for delay as to preserve what was deemed to be the most precious of American ideals. In a free democracy the decisions of courts, even the Supreme Court of the

United States, have never been considered sacrosanct or free from challenge.

In 1798 Jefferson and Madison on behalf of Virginia and Kentucky challenged the constitutional validity of the Federal sedition law. They contended that the law was not only unconstitutional, that it was in violation of the compact with the states and would continue so until effectuated by constitutional amendment. No attempt was made to force obedience on the part of Kentucky and Virginia but in 1801 Jefferson, author of the Kentucky resolution, was elected president of the United States.

In 1832, South Carolina nullified the Federal tariff act passed that year and nothing was done to force obedience but a new tariff act was passed forthwith. In 1838, the State of Georgia was ordered by the Supreme Court of the United States not to remove the Cherokee Indians beyond the state. This was the famous case in which President Andrew Jackson injected himself into the picture and issued his famous pronouncement, "John Marshall has made his decision, now let him enforce it." The order was not obeyed. The State of Wisconsin refused to follow the order of the Supreme Court in the Dred Scott decision promulgated prior to the Civil War. Georgia and Virginia have recently but respectfully declined to follow orders of the Supreme Court relying on control of their own process and the fact that there was still a modicum of sovereignty in the states that they had a right to invoke. In none of the foregoing incidents was any attempt made to coerce the states.

Some anthropologists and historians much better informed than I am point out that segregation is as old as the hills. The Egyptians practiced it on the Israelites; the Greeks did likewise for the barbarians; the Romans segregated the Syrians; the Chinese segregated all foreigners; segregation is said to have produced the caste system in India and Hitler practiced it in his Germany, but no one ever discovered that it was in violation of due process until

recently and to do so some of the same historians point out that the Supreme Court abandoned the Constitution, precedent and common sense and fortified its decision solely with the writings of Gunner Myrdal, a Scandinavian sociologist. What he knew about constitutional law we are not told nor have we been able to learn.

Such is in part the predicate on which the states are resisting integration. They contend that since the Supreme Court has tortured the Constitution, particularly the welfare clause, the interstate commerce clause, the Ninth and Tenth Amendments, the provisions relating to separation of state and federal powers, and the powers not specifically granted to the Federal government being reserved to states, they have a right to torture the court's decision. Whatever substance there may be to this contention, it is certain that forced integration is not the answer to the question. It is a challenge to freedom of action that is contrary to every democratic precept. It is certain that attempts at integration by court order have engendered more strife, tension, hatred and disorder than can be compensated for in generations of attempt on the part of those who are forward looking and want to do so. They have done more to break down progress and destroy good feeling and understanding between the races than anything that has taken place since emancipation. Social progress in any time is not measured by legislative acts and decree; it is measured by qualitative citizenship.

The seventeen states committed to segregation have the material stake in this question. They have spent billions on separate schools, hospitals and other institutions in the attempt to provide "separate but equal" facilities and opportunities for both races in reliance on what they understood to be the law. Violence has arisen everywhere and continues to arise account of attempts to comply with the Federal Courts' orders and the end is not yet. These "states are the natural guardians of the public against violence"; they know the reasons for it; they are fully

aware that such tensions are grounded in the attempt of the Federal Courts at a form of enforced integration that is contrary to every precept that activates the need for law in this country.

Human nature may not be what it should be but such as it is, we are compelled to take it into account. The problem presented is more social than legal. In fact law is not the conclusive answer. Social advancement has never been measured by legal formulas and human nature has not reached the point where human ingenuity will not find a road to bypass laws and regulations which attempt to abrogate long settled social standards. To be enforced in a democracy law must always follow and never precede a felt necessity for it. This was never better illustrated than by what is now being done to bypass Federal integration orders and what happened to national prohibition in the thirties. Surveys made in Washington City schools where integration has been attempted for at least two years also fortify this premise. If, as pointed out in the opinion of Mr. Justice Roberts, the Supreme Court of the United States recognizes that the "dominant interest" of the state is to prevent violence and the record here points the road to violence; that in itself is enough for this court to withhold the issuance of its mandate. The record is best fortified by what is or has been taking place in more than a half dozen states.

Then it has been revealed that these riots and outbreaks were not activated by local people but by interlopers from other places, in other words, social boll weevils, fruit flies, potato bugs, bean beetles, cane borers and other pests that we institute quarantines or other rigid measures against to get rid of. It takes time to do this and then it must be done by legal processes, otherwise we invoke that which is at least in the nature of the communist manifesto to enforce democratic processes. The problem is a different one in every state and in this state the governor and the educational authorities are pursuing legal methods to solve the

problem. After all is said the big question is not one of defying constituted authority, it is one of finding a way of solving a serious problem recently thrust upon the states with segregated schools and at the same time preserve their traditions, their moral, social, cultural and educational standards.

For the purpose of fortifying the premises discussed in the preceding paragraphs, it is pertinent to point out that the legislature on recommendation of the Fabisinski Committee, appointed by the governor, to recommend a method to best handle the segregation question in a legal way, has enacted Chapter 31380, Chapter 31389, Chapter 31390, and Chapter 31391, Acts of 1956. The first of this series of acts became effective July 26, 1956, and the other three became effective August 1, 1956. These acts, including those they amended, defined a complete scheme to administer the public school system. They were enacted under the police powers to promote the safety, health, order, welfare and education of the people within the State of Florida.

They also confer additional powers on the governor in that they authorize him to promulgate and enforce rules and regulations to protect the public against violence and property damages. They recognize that the state has the dominant interest in and is the natural guardian of the public against violence. It is perfectly evident that these acts had in view recent Federal decisions affecting segregation in that they authorized county boards of public instruction to choose personnel from all available sources, to consolidate school programs at any school center and to dismiss any teacher or teachers not essential to carry on the consolidated school program.

Another purpose of these acts was to preserve the welfare of all classes and by a system of uniform tests classify all school entrants according to intellectual ability and scholastic proficiency to the end that there will be established in each school within the county an environment of

equality among those of like qualification and academic attainments. What effect, if any, the system so created will have on the case before us, I do not discuss. The point is that it expresses the public policy of the state as to the question. Those administering our educational program are moving as fast as consistent with wise judgment to set it up and other systems not materially different to protect the public from violence have been approved though they had little, if any, educational aspect, United A. A. & A. I. W. vs. Wisconsin Employment Relations Board, — U. S. —, 100 L. Ed. (Advance p. 666); *Gong Lum v. Rice*, 275 U. S. 78, 72 L. Ed. 172.

These acts were passed since we last considered this case, they offer a sound and sensible basis to handle the school problem in Florida which was thrown into confusion overnight by Brown vs. Board of Education of Topeka, 347 U. S. 483, 68 L. Ed. 873, which in turn overthrew and kicked out the window the recognized school policy approved by all courts in the country for generations. The change has precipitated school problems peculiar to every state in the country. If Florida is not authorized to meet and solve the problem by which it is confronted in a sane and sensible manner, then all the law I have been taught governing state and Federal power has been pitched down the drain.

For these reasons I concur in the opinion of Mr. Justice Roberts.

---

Hobson, *J.*, Concurring specially:

I concur in the conclusion reached by the majority because the testimony which was taken at the direction of this court by the Honorable John A. H. Murphree, and which is now before us for consideration, was not in the record when the Supreme Court of the United States said "there is no reason for delay". This testimony, as well as the revealing incidents (of which we may take judicial notice) which have

occurred since the repudiation of the "separate but equal" doctrine, convinces me that the immediate admission of relator to the University of Florida College of Law would result in great public mischief.

In the interest of both races, that is to say, the commonweal, the writ of mandamus should, in the exercise of sound judicial discretion, be withheld until the Supreme Court of the United States in this case, after consideration of those matters which it has not heretofore had an opportunity to weigh and evaluate, unequivocally directs that relator be admitted to the College of Law at the University of Florida. In such event the onus will rest, as it should, with the tribunal responsible for the initial departure from a constitutional interpretation which had served us for so many years. And since I am bound by the paramount federal law, if such ruling should be made by a fully informed Supreme Court, I could not fail to comply without stultifying my oath of office.

---

THOMAS, *J.* Dissenting:

After a careful examination of the opinion prepared for a majority of the court, I come to the conclusion that I must dissent.

It seems fitting, before recording my reasons for disagreement, to set out a chronology of the important steps in this protracted litigation.

On 30 May 1949 the relator filed in this court a petition for a writ of mandamus to command the respondents, members of the Board of Control and the president and the registrar of the University of Florida, to admit the petitioner, a Negro, to the college of law of the University. Adams, C. J., and Terrell, Sebring, Barns and Hobson, J.J., voted to issue an alternative writ of mandamus while Chapman, J., and the writer dissented on the ground that the petitioner had not first applied to the State Board of

Education. The alternative writ, issued 10 June 1949, was in the usual form and commanded the respondents to admit the relator to the college of law or show cause 11 July 1949 why a peremptory writ should not follow.

From the answers, filed in response to the alternative writ of mandamus, it appeared that at the time of relator's application the college of law at the University of Florida was the only law school maintained in the state by taxes, and that relator had been informed that because there was no law school then functioning within the State where Negro students could be enrolled, the Board of Control was prepared to provide him, at a college or university acceptable to him in another state, courses of study as valuable as any offered in an institution of higher learning in Florida. At this time and for many years before the Florida Agricultural and Mechanical College staffed exclusively by Negroes and maintained exclusively for members of the Negro race, supported by State taxation, had been functioning in Tallahassee.

Attention was drawn to the laws of the state restricting courses at the University of Florida to members of the white race and the respondents asserted that in denying the relator's application they had not acted arbitrarily but had only obeyed the statute and the Constitution. It was provided in Section 228.09, Florida Statutes, that "schools for white children and the schools for negro children shall be conducted separately." Section 12 of Art. XII, of the Consitution follows: "White and colored children shall not be taught in the same school, but impartial provision shall be made for both."

To repeat, it was in obedience to the statutory and constitutional inhibitions that the respondents declined to admit the relator to the college of law at the University of Florida, and in order to afford him the training he desired they offered to secure him an education of equal quality at an institution outside the state where Negroes were not barred

It was further represented that all state institutions of higher learning, including the University of Florida, and Florida Agricultural and Mechanical College— the name was changed to Florida Agricultural and Mechanical University by Chapter 27995, Laws of Florida, Acts of 1953—were managed and controlled by the Board of Control under the supervision of the State Board of Education and that from time to time, as the need arose, courses were added to the curricula of the institutions. Carrying out this policy, according to the answer, the Board of Control had, prior to the demand of relator, included in its budget requests for funds to be used in the establishment of a law school at Florida Agricultural and Mechanical College. As a conclusion the respondents stated that if the relator still refused "to accept out-of-state scholarship or other provision which may be made for his instruction in the courses he has requested elsewhere than at a State institution established for white students exclusively, and it should be held that said arrangement is insufficient to satisfy the relator's lawful demands, the respondent, Board of Control, has made provision for relator's immediate admission and enrollment" at the law school established at Florida Agricultural and Mechanical College. In the event the "necessary facilities, equipment and personnel for said course of study should not be immediately available" at Florida Agricultural and Mechanical College, continued respondents, the respondents had "made provision for [relator's] instruction * * * at the only other institution of higher learning in the State of Florida offering such course, until such time as adequate and comparable facilities and personnel * * * [could] be obtained and physically set up at Florida Agricultural and Mechanical College for Negroes, in Tallahassee, Florida."

The relator moved for a peremptory writ notwithstanding the answer.

The members of this court were in unanimous agreement that the entry of a final order should be withheld.

and jurisdiction meanwhile retained, until the court should be satisfied either that the Board of Control had furnished, or failed to furnish, to the relator the opportunity, to pursue his desired course of study, substantially equal to the opportunity given students at other institutions supported by taxation. State ex rel. Hawkins v. Board of Control of Florida et al., Fla., 47 So. 2d 608.

The relator moved again for a peremptory writ, 16 May 1951. State ex rel. Hawkins v. Board of Control et al., Fla., 53 So. 2d 116. This writ was denied, 15 June 1951, on the ground that the relator had not shown that he had exhausted all reasonable means of gaining admittance to the University of Florida. The order was entered without prejudice to the right to renew the motion for a peremptory writ when the relator could show that he had "brought himself within the principles enunciated in State ex rel. Hawkins v. Board of Control * * *." Fla., 47 So. 2d 608.

The relator petitioned the Supreme Court of the United States to review the last order by certiorari but on 13 November 1951, that court declined because the judgment was not final. Florida ex rel. Hawkins v. Board of Control of Florida, 342 U. S. 877, 72 S. Ct. 166, 96 L. Ed. 659.

On 7 June 1952 the relator presented his third motion for a peremptory writ. In an opinion of this court filed 1 August 1952, it was written that by making this motion the relator was taking the position that he would only enjoy the full political rights guaranteed by the Federal Constitution by being admitted to the University of Florida Law School, a school maintained exclusively for white persons, even though a law school, exclusively for Negroes, supported by taxation was available to him. The court held, unanimously, that the motion should be denied and the alternative writ quashed. State ex rel. Hawkins v. Board of Control et al., Fla., 60 So. 2d 162.

The Supreme Court of the United States granted certiorari to review this judgment, ordered the judgment vacated and remanded the cause to this court "for consid-

eration in the light of the Segregation Cases decided May 17, 1954, Brown v. Board of Education, etc., and conditions that now prevail." The mandate was dated 24 May 1954. Florida ex rel. Hawkins v. Board of Control of Florida, 347 U. S. 971, 74 S. Ct. 783, 98 L. Ed. 1112.

It should be remarked here that the case of Brown v. Board of Education, cited in the mandate, was one dealing with elementary schools while the present litigation involved a graduate school, and the direction that this court reconsider its judgment not only in the light of the cited case but also of "'*conditions that now prevail*'" was quite confusing as will be emphasized when we advert to the decision in Brown v. Board of Education and allied decisions of the Supreme Court of the United States, and to a later mandate affecting the present litigation. (Italics supplied.)

In response to the mandate, this court entered its order 31, July 1954, directing the relator to amend his petition within 60 days so as to present the issues raised by the original petition "'in the light of the Segregation Cases * * * and conditions that now prevail'" and directing respondents within 30 days afterward to amend their return so that this court would be enabled to abide by the mandate.

In obedience to the order both petition and return were amended resulting in presentation of the single question "whether or not the relator [was] entitled to be admitted to the University of Florida Law School upon showing that he [had] met the routine entrance requirements." State of Florida, ex rel. Virgil D. Hawkins, Relator v. Board of Control, Fla., 83 So. 2d 20. This opinion was filed 19 October 1955. So the issue was then narrowed to the one whether or not the relator's petition should be rejected because he was a member of the Negro race.

Meanwhile, between the time the pleadings were amended and the last cited decision was rendered, the Supreme Court of the United States entered its opinion, Brown v. Board of Education of Topeka, 349 U. S. 294, 75 S. Ct. 753, implementing the decision in the case of Brown

v. Board of Education of Topeka, 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873, 38 A. L. R. 2d 1180. In the 'implementation decision' that court recognized that varied problems would exist locally the solution of which might require time and that school authorities should bear the burden of showing what delay was necessary "in the public interest and * * * consistent with good faith compliance at the earliest practicable date." Brown v. Board of Education of Topeka, 349 U. S. 294, 75 S. Ct. 753.

So when the opinion of 19 October 1955 was filed by this court it was the majority view that, inasmuch as the mandate had referred to a case dealing with elementary schools, and the decision in that case had been implemented to permit some delay in meeting and solving problems, and this court had been directed to re-examine the decision in the present case in the light not only of that case but also in the light of "conditions that now prevail," a commissioner should be appointed to take testimony about local problems, and adjustments that would be necessary under conditions that prevailed, in order to admit the relator, and that upon such testimony the court would decide when a peremptory writ should issue. Four months from the date of the decision, 19 October 1955, was the period fixed for taking the testimony, and before that time expired the period was extended to 31 May 1956.

A petition for certiorari to review the decision of 19 October 1955 was presented to the Supreme Court of the United States and that court, 12 March 1956, while the testimony being taken under the decision of 19 October 1955 was incomplete, entered a decision per curiam. Some confusion resulted because the order began with the statement "The petition for certiorari is denied" and the concluding paragraph began with the statement "The petition for writ of certiorari is granted." The issuance of the mandate of 24 May 1954 was recited, then the court observed that it directed "the case be reconsidered in light of our decision

in the Segregation Cases," but any reference to consideration of the matter "in the light of * * * conditions that now prevail" was omitted. Then the court explained that in directing this court to reconsider there was no implication that decrees affecting graduate students present the "problems of public elementary and secondary schools." To stress the point it was announced that in three cases: Sweatt v. Painter, 339 U. S. 629, Sipuel v. Board of Regents of the University of Oklahoma, 332 U. S. 631, Cf. McLaurin v. Oklahoma State Regents for Higher Education, 339 U. S. 637, the court had "ordered the admission of Negro applicants to graduate schools without discrimination because of color," and it was expressly stated that the 'implementation decision' "*had no application to a case involving a Negro applying for admission to a state law school.*" (Italics supplied.)

So the mandate of 24 May 1954 was recalled and the case remanded, "on the authority of the Segregation Cases decided May 17, 1954, Brown v. Board of Education, 347 U. S. 483." This is the now familiar decision dealing with elementary schools. The judgment concluded with this significant language: "As this case involves the admission of a Negro to a graduate professional school, there is no reason for delay. He is entitled to prompt admission under the rules and regulations applicable to other qualified candidates." State of Florida ex rel. Virgil D. Hawkins v. The Board of Control, opinion filed March 12, 1956.

Despite the ambiguities which I have pointed out, I think, and I thought as early as 19 October 1955, when the decision of this court directing the taking of testimony was rendered, that the Supreme Court of the United States had, in effect, declared invalid the provision of the Constitution of the State of Florida in conflict with the interpretation that court had given the Constitution of the United States.

From the time of the decision in Plessy v. Ferguson, 163 U. S. 537, 16 S. Ct. 1138, 41 L. Ed. 256, rendered in 1896, decisions by this court that white and colored students

should be segregated but that the opportunities should be equal enabled members of this court to observe their personal oaths to support, protect and defend the Constitution of this state and do so in perfect harmony with rulings of the Supreme Court of the United States on the subject. The inhibition in the State Constitution is stated in clear, unambiguous language. Construing it verbatim brought no inconsistency with construction of the Constitution of the United States which contains no express language prohibiting segregation. In the recent decision overturning a precedent of 60 years; nobody seems ever to have bothered to consider the effect upon the oath of members of this court to support an absolute state constitutional inhibition of integration in schools in this state.

At the time of the rendition of the decision of 19 October 1955 I thought, despite the apparent ambiguity in the order on the first petition of certiorari, that no further testimony with reference to prevailing conditions had been contemplated. Because of this view and the thought that no testimony was needed to dispose of the case, the issue having been reduced to the one whether a Negro could be barred simply by reason of his race, I thought the decision was wrong, so I dissented. And my conviction was buttressed by the understanding that the respondents had not requested the procedure, anyway.

My conclusion was confirmed by the entry of the second judgment. Even though there was a repeated reference to the Brown case, the language already quoted and then repeated dissipated any impression that there was occasion for further delay.

I cannot agree that when a decision denying a petition for mandamus is, in effect, reversed the subordinate court retains the power to issue the writ at some later date. It is my view that in such case the discretion, held to have been abused, has been exhausted and the time has arrived to obey the mandate of the higher court.

It seems to me that if this court expects obedience to its mandates, it must be prepared immediately to obey

mandates from a higher court. In this case when the Federal question was presented and determined by the Supreme Court of the United States, the ruling became binding upon this court at once regardless of our lack of sympathy with the holding.

Inasmuch as, to repeat, the Supreme Court of the United States has ruled that "there is no reason for delay" and that the "relator is entitled to prompt admission under the rules and regulations applicable to other qualified candidates" I think this litigation has ended and that the matter is now one purely of administration.

---

DREW, J., Dissenting:

It is a fundamental truth that justice delayed is justice denied. This case has now reached the point where further delay will be tantamount to a denial of a constitutional right of relator.

Mr. Justice Sebring pointed out the course in his dissenting opinion in State ex rel. Hawkins v. Board of Control, 83 So. 2d 20 (Fla. 1955) with which I must now agree. The Constitution of the United States of America, Article VI, provides that "This Constitution * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of Any State to the Contrary notwithstanding." The oath of office I have taken requires that I "support, protect and defend" it. The Supreme Court of the United States has been established by long tradition as the final interpreter of the Constitution of the United States. Such an interpretation has been made in this case.

I cannot conclude that any discretion remains in this Court to lawfully postpone the issuance of a peremptory writ. This mandamus is a discretionary writ is academic, but that this broad principle is applicable in those cases where an authoritatively declared constitutional right is being denied—I cannot agree. See State ex rel. Beacham

v. Wynn, 158 Fla. 182, 28 So. 2d 253, 254 (1946), in which this Court said "Where the right is indisputable there is no room for the exercise of discretion other than in keeping with the law." Also see Osborn v. The Bank of the United States, 22 U. S. 738, 866, 6 Law Ed. 204, 234 (1824).

Courts are the mere instruments of the law and can will nothing. Judicial discretion is a legal discretion. It is a discretion to be exercised in discerning the course prescribed by law. When, as here, that course has been discerned and a determination has been reached that relator is being denied his constitutional right, it is the clear duty of this Court to enforce the right. The power vested in the judiciary should never be exercised for the sole purpose of giving effect to the will of the judge. The power we possess is for the purpose of giving effect to the will of the law. I conceive it to be my plain duly to give effect to the law which has been established by the United States Supreme Court.

I, therefore, respectfully dissent.

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U.S.
FILED
JUL 5 1957
JOHN T. FEY, Clerk

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1956

No. ~~1068~~ 169

THE STATE OF FLORIDA, EX REL. VIRGIL D. HAWKINS,
*Petitioner,*

v

THE BOARD OF CONTROL, ET AL.,
*Respondents.*

## BRIEF FOR THE RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

RICHARD W. ERVIN
*Attorney General*
*State of Florida*

RALPH E. ODUM
*Assistant Attorney General*
*State of Florida*

JOHN J. BLAIR
*Assistant Attorney General*
*State of Florida*

WILSON W. WRIGHT
*Special Assistant Attorney General*
*State of Florida*

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1956

---

No.....

THE STATE OF FLORIDA, EX REL. VIRGIL D. HAWKINS,
*Petitioner,*

v

THE BOARD OF CONTROL, ET AL.,
*Respondents.*

---

## BRIEF FOR THE RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

---


RICHARD W. ERVIN
*Attorney General*
*State of Florida*

RALPH E. ODUM
*Assistant Attorney General*
*State of Florida*

JOHN J. BLAIR
*Assistant Attorney General*
*State of Florida*

WILSON W. WRIGHT
*Special Assistant Attorney General*
*State of Florida*

# INDEX


| | Page |
|---|---|
| Opinions Below | 1 |
| Jurisdiction | 2 |
| Questions Presented | 2 |
| Statement | 2 |
| Argument | 14 |
| Part One: The Law | 14 |
| Part Two: Factual Considerations | 28 |
| Conclusion | 56 |
| *Appendix A* | |
| Opinion of U. S. Supreme Court of March 12, 1956, in The State of Florida, ex rel. Virgil D. Hawkins v. The Board of Control, et al. | 60 |
| *Appendix B* | |
| House Concurrent Resolution No. 174 (Florida) | 61 |
| *Appendix C* | |
| Report of the Florida Legislative Investigation Committee | 69 |


## CITATIONS


| Cases: | |
|---|---|
| *Alexander v. Hillman*, 296 U. S. 222, 56 S. Ct. 204, 80 L. ed 192 | 18 |
| *Bowman v. Wathen*, 1 How. 189, 11 L. ed 97 | 16 |
| *Bradenton v. State*, 118 Fla. 838, 160 So. 506, 100 A.L.R. 400 | 17 |
| *Bruce v. Tobin*, 38 S. Ct. 7, 245 U.S. 18, 62 L. ed 123 | 19 |
| *Brown v. Board of Education of Topeka*, 347 U.S. 483, 98 L. ed 873, 74 S. Ct. 686, 38 A.L.R. 2d 1180; and 349 U.S. 294, 75 S. Ct. 753, 99 L. ed 1083 | 1, 14, 17 |
| *Brown v. Dewell*, 131 Fla. 566, 179 So. 695; 115 A.L.R. 857 | 15 |
| *Burgess v. Seligman*, 107 U.S. 20; 2 S. Ct. 10, 27 L. ed 359 | 26 |
| *Bute v. People of State of Ill.*, 68 S. Ct. 763, 333 U.S. 640, 92 L. ed 986 | 25, 26 |
| *City of Safety Harbor v. State ex rel. Smith*, 136 Fla. 636, 187 So. 173 | 15 |
| *Eccles v. Peoples Bank*, 333 U.S. 426, 68 S. Ct. 641, 92 L. ed 784 | 18 |
| *Feldman v. United States*, 64 S. Ct. 1082, 322 U.S. 487, 88 L. ed 1408, 154 A.L.R. 982 | 25 |
| *Fox Film Corp. v. Muller*, 55 S. Ct. 444, 294 U.S. 696, 79 L. ed 1234, certiorari [illegible]ssed, 56 S. Ct. 183, 296 U.S. 207, 80 L. ed 158 | 19 |
| *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 27 S. Ct. 618, 51 L. ed 1038 | 18 |
| *Holliday v. Pacific Atlantic S.S. Co.*, D.C. Del. 1953, 117 F. Supp. 729, affirmed 212 F. 2d 206 | 16 |
| *Hoxie v. N. Y.*, 73 A. 754, 82 Conn. 352 | 23 |
| *In re Briley's Estate*, 155 Fla. 798, 21 So. 2d 595 | 25, 26 |
| *In re Morris, Ala.*, 9 Wall. 605, 19 L. ed 799 | 18 |
| *In re Opinion of the Justices*, 8 N.E. 2d 753, 297 Mass. 567 | 25 |

Page

*Konkel v. State*, 170 N.W. 715, 168 Wis. 355 23
*Maguire v. Tyler*, 17 Wall. 253, 21 L. ed 576 19, 20
*Mazzin v. Hunter's Lessee*, 1 Wheat. 304, 4 L. ed 97 19, 20
*Mayo v. Polk County*, 169 So. 41, affirmed 81 Law ed 376 44
*Miami v. Huttoe*, 40 So. 2d 899 17
*Morton Salt Co. v. Suppiger Co.*, 314 U.S. 488, 62 S. Ct. 402, 86 L. ed 363 16
*McCulloch v. Maryland*, 4 Wheat. 316, 4 L. ed 579 19, 20, 21
*Naim v. Naim* 197 Va. 734, 90 S.E. 2d 849; 350 U.S. 985, 76 S. Ct. 472, 100 L. ed 852 14
*Nelson v. Lindsey*, 151 Fla. 596, 10 So. 2d 431 17
*New Jersey v. New York*, 283 U.S. 473, 51 S. Ct. 519, 75 L. ed 1176 18
*Parker v. Brown*, 63 S. Ct. 307, 317 U.S. 341, 87 L. ed 315 23
*Penn v. Tollison*, 26 Ark. 545, 577 26
*People v. Daly*, 105 N.E. 1048, 212 N. Y. 183 23
*People of the State of New York v. State of New Jersey and Passaic Valley Sewerage Commissioners*, 256 U.S. 296, 41 S. Ct. 492, 65 L. ed 937 18
*Ryan v. State*, 58 S. Ct. 233, 302 U. S. 186, 82 L. ed 187 23
*Safety Harbor v. State*, 136 Fla. 636, 187 So. 173 17
*Somlyo v. Schott*, 45 So. 2d 502 15
*So. Fork Canal Co. v. Gordon*, C. C. Cal. 1868, Fed case #13,189, 2 U.S. 479, 8 A.L.R. 279 16
*Standard Oil Co. v. United States*, 221 U.S. 1, 31 S. Ct. 502, 55 L. ed 619 18
*Stanley v. Schwalby*; 162 U.S. 255, 40 L. ed 960, 16 S. Ct. 754 19, 20
*State ex rel American Legion 1941 Convention Corporation of Milwaukee v. Smith*, 293 N.W. 161, 235 Wisc. 443 25
*State ex rel Bottome v. City of St. Petersburg*, 126 Fla. 233, 170 So. 730 15
*State ex rel. Carson v. Bateman*, 131 Fla. 625, 180 So. 22 15
*State v. Daytona Beach*, 129 Fla. 896, 176 So. 847 17
*State ex rel Gibbs v. Gordon*, 158 Fla. 312, 189 So. 437 25
*State ex rel Gibson v. City of Lakeland*, 126 Fla. 342, 171 So. 227 15
*State of Florida, ex rel. Virgil D. Hawkins v. Board of Control of Florida*, et al. 47 So. 2d 608 (1950), 53 So. 2d 116 (1951), 60 So. 2d 162 (1952), 83 So. 2d 20 (1955), 93 So. 2d 354 (1957), 342, U.S. 877, 72 S. Ct. 166, 96 L. ed 659; 347 U.S. 971, 74 S. Ct. 783, 98 L. ed 1112; 350 U.S. 413, 76 S. Ct. 464, 100 L. ed 486; reh. den. 351 U.S. 913, 76 S. Ct. 693, 100 L. ed 1449 1, 2, 3, 10, 28
*State ex rel Long v. Carey*, 121 Fla. 515, 164 So. 199 15
*State v. Miami*, 153 Fla. 90, 13 So. 2d 707 17
*State ex rel Norman v. Holmer*, 160 Fla. 434, 35 So. 2d 396 15
*State v. West Palm Beach*, 141 Fla. 244, 193 So. 297 17
*State ex rel West Flagler Kennel Club v. Florida State Racing Commission*, 74 So. 2d 691 15
*Thornhill v. Kirkman*, 62 So. 2d 740 44

Page

*Touchton v. Fort Pierce*, 109 F. 2d 370 ..... 17
*United Automobile, Aircraft and Agricultural Implement Workers, et al v. Wisconsin Employment Relations Board*, et al., 351 U.S. 266, 76 S. Ct. 794, 100 L. ed 1162 ..... 21
*United Enterprises v. Dubey*, 128 Fed. 2d 843, 87 L. ed 537 ..... 45
*United States v. American Tobacco Co.*, 221 U.S. 106, 31 S. Ct. 632, 55 L. ed 663 ..... 18
*United States v. Morgan*, 307 U.S. 183, 59 S. Ct. 795, 83 L. ed 1211 ..... 17
*Urie v. Thompson*, 69 S. Ct. 1018, 337 U.S. 163, 93 L. ed 1282 ..... 19
*Westfall v. United States*, 47 S. Ct. 629, 274 U.S. 259, 71 L. ed 1036 ..... 25
*Williams v. Bruffy*, 102 U.S. 248, 26 L. ed 135 ..... 19, 20

Statutes:
*United States Code*, Title 28 ..... 19
*United States Code*, Sections 1257(3), 1651(a) and 2106 of Title 28 ..... 2

Miscellaneous:
Congressional Record for 1956, Vol. 102, No. 54, p. 5092 ..... 38
Farewell Address of George Washington ..... 24
Federalist Papers ..... 23
First Inaugural Address, Thomas Jefferson ..... 23
Injunctions and Other Extraordinary Remedies, Section Edition, by T. C. Spelling ..... 15
Martin, John Bartlow, "The Deep South Says Never," Saturday Evening Post of June 15, 1957 ..... 33
Myrdal, Gunnar, "An American Dilemma," pages 58, 61 ..... 80

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1956

No. .....

THE STATE OF FLORIDA, EX REL. VIRGIL D. HAWKINS,
*Petitioner,*

v.

THE BOARD OF CONTROL, ET AL.,
*Respondents.*

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

## BRIEF FOR THE RESPONDENTS IN OPPOSITION

### OPINIONS BELOW

The opinions of the United States Supreme Court are reported as follows: State of Florida, ex rel. Virgil D. Hawkins v. Board of Control of Florida, et al, 342 U.S. 877, 72 S.Ct. 166, 96 L.ed. 659; 347 U.S. 971, 74 S.Ct. 783 98 L.ed. 1112; 350 U.S. 413, 76 S.Ct. 464, 100 L.ed. 486; reh. den. 351 U.S. 915, 76 S.Ct. 693, 100 L.ed. 1449, Brown v. Board of Education of Topeka, 347 U.S. 483, 98 L.ed. 873, 74 S.Ct. 686, 38 A.L.R. 2d 1180; and 349 U.S. 294, 75 S.Ct. 753, 99 L.ed. 1083. The opinions of the Florida Supreme Court are reported as follows: State ex rel. Hawkins v. Board of Control of Florida, et al, 47 So. 2d 608 (1950), 53 So. 2d 116 (1951), 60 So. 2d 162 (1952), 83 So. 2d 20 (1955), 93 So. 2d 354 (1957).

## JURISDICTION

The jurisdiction of the Court is invoked under Sections 1257(3), 1651(a) and 2106 of Title 28 of the United States Code.

## QUESTIONS PRESENTED

May the Supreme Court of Florida in the exercise of its discretion delay the issuance of its writ of mandamus ordering petitioner's admission to the University of Florida when such court has before it evidence that to order immediate admission of petitioner at this time would work a serious public mischief and would seriously interefere with the proper operation of the State University System?

Did the Supreme Court of Florida act in violation of the instructions issued by this Court on March 12, 1956, when, predicated upon evidence received subsequent to the issuance of such instructions to the effect that immediate admission of petitioner to the University of Florida would create havoc in the State University System and cause serious public mischief, said state court withheld the issuance of its writ of mandamus pending the disclosure of evidence by petitioner that serious harm to the state and school system would not result thereby?

Should this Court refuse to accept the findings and decision of the Florida Supreme Court and enter its own judgment ordering the immediate admission of petitioner to the University of Florida?

## STATEMENT

The history of this case is found in State ex rel. Hawkins v. Board of Control, et al, (Fla.) 47 So. 2d 608; (Fla.) 53 So. 2d 116, cert. denied 342 U.S. 877, 72 S.Ct. 166, 96 L.ed. 659; (Fla.) 60 So. 2d 162, cert. granted 347 U.S. 971, 74 S.Ct. 783, 98 L.ed. 1112; (Fla.) 83 So. 2d. 20, cert. denied 350 U.S. 413, 76 S.Ct. 464, 100 L.ed. 486, reh. denied 351 U.S. 915, 76 S.Ct. 693, 100 L.ed. 1449; (Fla.) 93 So. 2d 354.

On May 30, 1949, petitioner brought mandamus proceedings in the Florida Supreme Court against respondents to compel his admission to the College of Law at the University of Florida. The Court, on August 1, 1950, ruled that similar facilities in the state for Negroes satisfied the equal protection requirements of the Fourteenth Amendment. The Court did not enter a final order but retained jurisdiction in order to permit the parties to seek further relief at some later date. (Fla.) 47 So. 2d 608. On May 15, 1951, petitioner filed a motion again in the Florida Supreme Court for a peremptory writ of mandamus. The motion was denied on June 15, 1951, on the grounds that no showing was made for the issuance of the writ. (Fla.) 53 So. 2d 116. Petitioner then filed a petition for writ of certiorari in the United States Supreme Court. The petition was denied on the grounds that no final judgment had been entered. 342 U.S. 877. The petitioner filed his motion for a peremptory writ of mandamus in the Florida Supreme Court again, and it was denied August 1, 1952. (Fla.) 60 So. 2d 162. Reapplication was then made by petitioner to the United States Supreme Court for a writ of certiorari.

On May 24, 1954, the United States Supreme Court remanded petitioner's cause to the Florida Supreme Court with directions that such cause be reconsidered "in the light of the segregation cases decided May 17, 1954, Brown v. Board of Education, etc., and conditions that now prevail . . . in order that such proceedings may be had in the said cause in conformity with the judgment and decree of this (United States Supreme) Court above stated, as, according to right and justice and the Constitution and Laws of the United States, or to be had therein . . ." State ex rel Hawkins v. Board of Control, 347 U.S. 971, 74 S.Ct. 783, 98 L.ed. 1112.

Pursuant to the mandate of the Supreme Court of the United States, the Florida Supreme Court, on July 31, 1954,

entered an order directing the petitioner to amend his original petition in mandamus "so ...s to place before this (Florida Supreme) Court the issues raised by the original petition 'in the light of the segregation cases decided May 17, 1954, Brown v. Board of Education etc., and conditions that now prevail,'" and directing the respondents "to amend their return so as to present to this Court any answers they may have to said amended petition which will enable this Court to carry out the mandate of the Supreme Court of the United States."

In due course, and prior to the "implementation decree" of the United States Supreme Court, respondent filed an amended return which, among other defenses, stated "the admission of students of the Negro race to the University of Florida, as well as to other institutions of higher learning established for white students only, presents grave and serious problems affecting the welfare of all students and the institutions themselves and will require adjustments and changes at the institutions of higher learning; and respondents cannot satisfactorily make the necessary changes and adjustments until all questions as to time and manner of establishing the new order shall have been decided on further consideration of the United States Supreme Court." On October 19, 1955, the Supreme Court of Florida held, in essence, that although petitioner may not be constitutionally denied admission to the University of Florida because of race, nevertheless the possible threat of mischief and economic havoc to the public and the state university system, and the attendant possible need for time to assure a proper and smooth transition to a new order in the State University System, lent validity to the above-mentioned defense of respondents, which was designed to establish a predicate for an understanding of such need. The Supreme Court of Florida therefore determined that at least a need existed for intelligence in this regard before it could properly issue its peremptory writ of mandamus. The Supreme

Court of Florida considered this determination *a fortiori* essential and valid in light of this Court's decision of May 31, 1955, herein referred to as the "implementation decision," wherein it was stated:

> "Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility of elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts.
>
> "In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power.
>
> "At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a non-discriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.
>
> "While giving weight to these public and private considerations, the courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a

start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date. To that end, the courts may consider problems related to administration, arising from the physical condition of the school plant, the school and transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a non-racial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the adequacy of any plans the defendants may propose to meet the problems and to effectuate a transition to a racially non-discriminatory school system. During this period of transition, the courts will retain jurisdiction of these cases.

"The judgments below, except that in the Delaware case, are accordingly reversed and remanded to the district courts to take such proceedings and enter such orders and decrees consistent with this opinion as are necessary and proper to admit to public schools on a racially non-discriminatory basis with all deliberate speed the parties to these cases. . . .

"It is so ordered."

The Supreme Court of Florida further indicated that the clear import of the "implementation decision" was that State Courts shall apply equitable principles in the determination of the time when segregated schools shall become integrated. Borrowing from the language of the "implementation decision" the Florida Court said: "these cases call for the exercise by the Courts of the traditional powers of an equity Court with particular reference to 'its facilities for adjusting and reconciling public and private needs,' and the 'practical flexibility in shaping its remedies.'"

The Supreme Court of Florida decided that pursuant to

well established principles of equity and the directive of the "implementation decision" to the effect that the Court retain jurisdiction "during this period of transition," the Court "may properly take into account the public interest" as well as "personal interest" of petitioner in the elimination of such obstacles as might impede a systematic and effective transition to the accomplishment of the results ordered by the United States Supreme Court.

It was the opinion of the Supreme Court of Florida that, both under the equitable principles applicable to mandamus proceedings and the express command of the United States Supreme Court in its "implementation decision," the exercise of a sound judicial discretion requires the Court to withhold, for the present, the issuance of a peremptory writ of mandamus in this cause pending subsequent determination of law and fact as to the time when the petitioner should be admitted to the University of Florida School of Law. The Florida Supreme Court, therefore, appointed the Honorable John A. H. Murphree, Circuit Judge, as Commissioner of the Court, to take testimony from petitioner and respondents and such witnesses as they may produce material to the issues alleged in the defense of the respondents as follows:

> "That the admission of the students of the Negro race to the University of Florida, as well as to the other state institutions of higher learning established for white students only, presents grave and serious problems affecting the welfare of all students and the institutions themselves, and will require numerous adjustments and changes at the institutions of higher learning; and respondents cannot satisfactorily make the necessary changes and adjustments until all questions as to time and manner of establishing the new order shall have been decided on the further consideration thereof by the United States Supreme Court, at which time the necessary adjustments can be made as a part of one over-all pattern for all levels of education

as may be finally determined, and thereby greatly decrease the danger of serious conflicts, incidents and disturbances. . . ."

Judge Murphree was directed to file a transcript of such testimony, without recommendations or findings of fact, to this Court within four months from the date of the order, which was October 19, 1955. (Fla.) 83 So. 2d 20.

On January 23, 1956, respondent requested an extension of time for the filing of such information by the Commissioner for the following reasons:

(1) The assistant attorney general who handled the cause for respondents in the trial Court and the Supreme Court died during the pendency of this cause.

(2) The scope of the survey is so extensive that the information cannot be available for the Court by the due date of February 19, 1956, in that:

(a) such survey requires a study of student, faculty and parent attitudes toward integraton of Negroes at the University of Florida Law School; and

(b) it will require a survey or analysis of the facilities, students and faculties at Florida Agricultural and Mechanical University (Negro institution), including an accurate estimate, if possible, as to number of students now attending such university who would seek transfer to the University of Florida School of Law, or to another school; and

(c) it will require a determination as to whether such order would result in an increase or decrease in the student population at the University of Florida which had not been contemplated by school authorities and for which no administrative planning has been accomplished; and

(d) such study will require consideration of the phenomenal growth of Florida's population

which is directly related to overcrowded conditions of the universities and public schools of the state and in which population increase; economic growth and swiftly changing social structure places Florida in a unique position and creates problems relating to school segregation which do not exist to the same degree in other southern states; and

(e) the survey will require a thorough study and analysis to be made of the existing facilities at the University of Florida with regard to dormitory space, food and recreational facilities, and the adequacy of such facilities to meet the needs of the present enrollment of a drastically increased or decreased enrollment which might result if Negroes are admitted to the University of Florida Law School at this time; and

(f) such survey will require a review of available data relating to known achievement level distinctions between white and Negro high school and college students in Florida, and a comparative analysis of the effect of such distinctions upon administrative efforts to maintain and improve scholastic standards at Florida institutions of higher learning in general and upon the University of Florida Law School specifically if Negro students are integrated into the white universities at this time.

Respondents' request for extension of time indicated that surveys and studies were presently being made relating to such problems and that such surveys and studies could not be completed and analyzed with any degree of accuracy prior to the expiration of the present school term. Respondents also indicated that petitioner, in any event, would not be eligible for enrollment at the University of Florida School of Law until September, 1956, when the regular school term commences. It has been a long standing policy at the University of Florida that beginning law students cannot begin at the Summer Session.

The Florida Supreme Court granted respondents until May 31, 1956, in which to submit the requested information.

Petitioner, on January 16, 1956, rather than avail himself of the opportunity of presenting evidence before the court appointed Commissioner, sought in this Court the issuance of a writ of certiorari or any common law writ which might possibly be applicable to an interlocutory judgment of this nature.

On March 12, 1956, this Court denied petitioner's request for certiorari, and in the same order vacated its mandate of May 24, 1954, to the Supreme Court of Florida (347 U.S. 971), and substituted in lieu thereof an order instructing the Supreme Court to consider as applicable to the instant case certain other cases decided by this Court prior to the Brown decision and the "implementing decision" and relating to graduate professional schools. 350 U.S. 413 (App. A.)

Respondents requested a rehearing for the purpose of clarifying the intent of such substituted order, but such rehearing was denied. 351 U.S. 915.

Pursuant to the directions contained in the October 19, 1955, opinion of the Supreme Court of Florida, the court-appointed Commissioner, John A. H. Murphree, Circuit Judge, held testimony on May 21, 1956, on the question relating to the effect, if any, on the public and State University System, of an immediate admission of petitioner to the University of Florida. Counsel of record for the respective parties were duly notified of the hearing but neither the petitioner nor his counsel made an appearance. As part of the record Judge Murphree made the following statement:

> "I would say for the record that at a conference last January, about January 27, between myself as Com-

missioner in this cause, and Mr. Odom, of the Attorney General's office, and Mr. Hill, who represents Hawkins, that this present hearing was scheduled at 9:30 this morning, and that I advised the parties at that time that the Commissioner would expect to receive the evidence submitted by the Board of Control first and would then hear from Hawkins. On May 14 I wrote to counsel for the respective parties in this case and reminded them of my letter of January 27 which scheduled this hearing for this morning at 9:30; and when Hill and Hawkins did not show up at 9:30 this morning I telephoned Mr. Hill's office to find out if by chance he had met with mishap on his way to Gainesville, and his secretary advised that he did not intend to attend the hearing. As Commissioner, I, therefore, assume that nothing will be presented on behalf of Hawkins. Unless the Board of Control has something further, this hearing is concluded."

At this hearing the Commissioner accepted into evidence, after the proper legal predicate was laid, a survey conducted by the State Board of Control. This survey was instituted in an effort to make a determination as to whether serious administrative and other problems would be encountered as a result of the Florida Supreme Court decree that a member of the Negro race should not be denied admission to the University of Florida. A factual compilation of the attitudes of the students, parents of the students, faculties, alumni, and health service employees, of the three State universities toward desegregation, was contained in such survey, including the attitude of parents of white and Negro high school seniors toward desegregation.

Being germane to the question, the survey also included a study made by the Board of Control of the physical facilities at the three State universities to determine their current use, what additional facilities might be available because of anticipated construction, and whether any shortage might exist by the fiscal year 1959-60. The study included a

survey of classroom, food service, health service, housing, library, and recreational facilities.

On May 28, 1956, the Commissioner filed a transcript of the above-mentioned testimony "without recommendations or findings of fact" to the Supreme Court of Florida in accordance with such Court's directive of October 19, 1955. 83 So. 2d 20.

On June 20, 1956, petitioner applied to the Supreme Court of Florida for the issuance of a peremptory writ of mandamus ordering his immediate admission to the University of Florida. A hearing was held on such application before the Supreme Court of Florida on September 4, 1956, at which time both parties to the cause presented their respective arguments.

On February 19, 1957, respondents moved the Supreme Court of Florida to refer this cause to a Commissioner appointed by the court "for the purpose of receiving testimony from the Petitioner and Respondents and such other witnesses as either party may produce relative to matters previously unknown to Respondents, and recently discovered evidence affecting the bona fides of this cause, said evidence having been received by the State of Florida Legislative Investigating Committee on February 4 through February 7, 1957, or at times subsequent thereto."

The motion for referral to a Commissioner for the purpose of taking testimony on the bona fides of this cause was denied by the Supreme Court of Florida on February 26, 1957, which order of denial was subsequently corrected on March 5, 1957. On May 31, 1957, subsequent to such denial, an investigating committee of the Florida Legislature created for the purpose of investigating groups, both white and Negro, suspected of functioning for the purpose of creating racial strife and discord within the State of

Florida, submitted a report of its findings and recommendations. (App. C.) One of the Committee's recommendations requested that a copy of the testimony given before such committee "be made available to the proper officials of the Florida Bar and the state attorneys having jurisdiction where the hearings were held, with the request that the same be carefully studied and if violations of law or ethics have occurred that proper proceedings be instituted against any such offender." Such testimony included statements made by Horace E. Hill, the original counsel of record for petitioner in this cause. On May 27, 1957, said counsel of record, alleging ill health, requested and received the permission of the Supreme Court of Florida to withdraw from this cause.

On March 8, 1957, the Supreme Court of Florida rendered its decision to defer final judgment in this cause, and to delay the issuance of its peremptory writ of mandamus in light of properly presented factual information prompting the application of principles of equity necessary in the consideration of the issuance of such writ, and delaying the issuance of such writ until the facts will permit, or until the petitioner is prepared to present testimony which will obviate the necessity of applying such principles.

## ARGUMENT

### PART I: THE LAW

Argument of law in response to questions presented in Petitioner's brief:

This Court, in its order to the Supreme Court of Florida of March 12, 1956, said: ". . . The judgment is vacated and the case is remanded on the authority of the Segregation Cases decided May 17, 1954, Brown v. Board of Education, 347 U.S. 483. As this case involves the admission of a Negro to a graduate professional school, *there is no reason for delay.* He is entitled to prompt admission under the rules and regulations applicable to other qualified candidates." (Emphasis supplied.) (App. A.) Respondents and the Supreme Court of Florida, in light of sound reason and the necessary employment of legal and equitable principles, can only logically interpret the language of this order as having reference to the question of race. *Argumentum ab inconvenienti plurimum valet in lege.* Aside from race, it is manifest that constitutional, legal and practicable reasons may exist at times to deny or delay the admission of an applicant to a state university, whether he be white or Negro. It is also evident that if petitioner's interpretation were accepted it would abrogate the long-established rule which denies to federal courts the right to regulate or control long-established rules of procedure adopted by the state courts for the administration of justice (*cf.* Naim v. Naim, 197 Va. 734, 90 S.E. 2d 849; 350 U.S. 985, 76 S.Ct. 472, 100 L.ed. 852.

In the case at bar, the Supreme Court of Florida adhered to the above-mentioned order of this Court that as to the issue of race there is no reason for delaying petitioner's admission to the University of Florida. However, such order did not foreclose the authority of the Supreme Court of Florida to exercise its discretion to determine that it

was necessary and essential to consider other issues of vital importance to the public interest and safety of the State of Florida before issuing its peremptory writ of mandamus.

Even in a case where a clear legal right is shown, the exercise of jurisdiction to grant a writ of mandamus rests, to a considerable extent, within the sound discretion of the Court, subject, however, to the well-settled principles which have been established by the courts or fixed by statute; and evidence will usually be received, upon request of the respondent, to show that the writ should not issue. Respondents understand of course that such discretion is not absolute but yet the court may refuse the issuance of such writ even though warranted by the rules of law, if hardship or injustice would result to the opposite or to third parties from granting it. See Injunctions and Other Extraordinary Remedies, Second Edition, by T. C. Spelling.

The Supreme Court of Florida has held on numerous occasions that the writ of mandamus is discretionary and is only granted in the sound discretion of the court, and will decline its use if to do so would tend to work a serious mischief. State ex rel Long v. Carey, 131 Fla. 515, 164 So. 199; Brown v. Dewell, 131 Fla. 566, 179 So. 695, 115 A.L.R. 857; State ex rel West Flagler Kennel Club v. Florida State Racing Commission, 74 So. 2d 691; State ex rel Norman v. Holmer, 160 Fla. 434, 35 So. 2d 396; Somlyo v. Schott, 45 So. 2d 502; City of Safety Harbor v. State ex rel Smith, 136 Fla. 636, 187 So. 473; State ex rel Carson v. Bateman, 131 Fla. 625, 180 So. 22; State ex rel Gibson v. City of Lakeland, 126 Fla. 542, 171 So. 227; State ex rel Bottome v. City of St. Petersburg, 126 Fla. 233, 170 So. 730.

Where a superior court issues its mandate to the lower court with instructions to accomplish a certain act but without indicating how such act shall be performed, it has

been held that a large measure of discretion exists as to the manner of performance. Holliday v. Pacific Atlantic S.S. Co., D.C. Del. 1953, 117 F.Supp. 729, affirmed 212 F. 2d 296. The duty of the court below to obey and give effect to the mandate of the Supreme Court is effective only to the extent practicable. In re Morris, Ala., 9 Wall. 605, 19 L.ed. 799.

The action of the Supreme Court of Florida in delaying the issuance of its writ of mandamus was not contrary to the letter or spirit of the mandate of this court issued on March 12, 1956. Subsequent to such order of this Court the Supreme Court of Florida obtained evidence indicating that issues other than race existed which required the application of equitable principles prompting the delay of such writ. This action was in harmony with the principle that the mandate of the Supreme Court must be promptly and implicitly enforced by the Court below unless modified or restrained by subsequent evidence. So. Fork Canal Co. v. Gordon, C.C.Cal. 1868, Fed. case #13,189, 2 U.S. 479, 8 A.L.R. 279.

The Florida Supreme Court upon receipt of testimony received by its Commissioner considered it essential to apply equitable principles and thereby delay the issuance of its writ. It is a well-established principle that a court of equity is never active against conscience or public convenience. Bowman v. Wathen, 1 How. 189, 11 L.ed. 97. This Court has always felt it proper to apply principles of equity against the enforcement of legal doctrines upon the disclosure that the public interest might be affected adversely by the immediate enforcement of a legal decree. It is also manifest that courts of equity may appropriately withhold their aid when the plaintiff is using the writ asserted in a manner contrary to the public interest. Morton Salt Co. v. Suppiger Co., 314 U.S. 488, 62 S.Ct. 402, 86 L.ed. 363. Although mandamus is a common-law remedy,

the Supreme Court of Florida has consistently held that the application and enforcement of such writ should be governed by equitable principles. State v. Daytona Beach, 129 Fla. 896, 176 So. 847; State v. West Palm Beach, 141 Fla. 244, 193 So. 297; Miami v. Huttoe, 40 So. 2d 899; Safety Harbor v. State, 136 Fla. 636, 187 So. 173; Bradenton v. State, 118 Fla. 838, 160 So. 506, 100 A.L.R. 400; Nelson v. Lindsey, 151 Fla. 596, 10 So. 2d 131; State v. Miami, 153 Fla. 90, 13 So. 2d 707; State v. Board of Control, 83 So. 2d 20. Such is also true of the federal application of such writ. Touchton v. Fort Pierce, 109 F. 2d 370.

The Supreme Court of Florida, in light of testimony received by its Commissioner, considered it necessary to adopt these long adhered to principles in order to avoid public mischief and the occurrence of serious administrative problems in the operation of the State University System. These considerations are manifestly essential if an orderly and peaceful transition to the new order created by the Brown decision is to be made. The extent to which a court of equity may grant or withhold its aid and the manner of molding its remedies may be dictated or effected by the public interest involved. United States v. Morgan, 307 U.S. 183, 59 S.Ct. 795, 83 L.ed. 1211.

The State of Florida has experienced success in maintaining an emotional equilibrium in the wake of this Court's ruling prohibiting segregation in the public schools. This is attributable to the application of long-established equitable principles by the Supreme Court of Florida in dealing with this problem. Traditionally, equity has been characterized by practicable flexibility in shaping its remedies and by the facilities for adjusting and recognizing public and private needs. Brown v. Board of Education of Topeka, 349 U.S. 294, 75 S.Ct. 753, 99 L.ed. 1083. In some cases it is essential that a court apply equitable principles in

order to strike a proper balance between the needs of the plaintiff and the consequence of giving the desired relief. Eccles v. Peoples Bank, 333 U.S. 426, 68 S.Ct. 641, 92 L.ed. 784. The necessary flexibility of established forms employed by courts of equity permit proceedings and remedies to be adapted to the circumstances of each individual case and their formulation in such a manner as to safeguard, adjust and enforce the rights of all parties. Alexander v. Hillman, 296 U.S. 222, 56 S.Ct. 204, 80 L.ed. 192.

The Supreme Court of Florida in its last decision, predicated upon the evidence before it, decided that it should delay the issuance of its writ at this time. Having so decided, the Supreme Court of Florida deferred final judgment and offered petitioners an opportunity to present evidence before it, at any time, which would indicate that such a writ could be issued without attendant mischief. Deferring judgment and permitting time is not novel, this Court having consistently permitted time in the implementation of decrees involving long-established public policy which affected the public interest. Recognizing that certain decrees present an urgent need for adjustment this Court has permitted time in which to overcome the many problems attendant in such adjustment. United States v. American Tobacco Co., 221 U.S. 106, 31 S.Ct. 632, 55 L.ed. 663; Standard Oil Co. v. United States, 221 U.S. 1, 31 S.Ct. 502, 55 L.ed. 619. The need for a period of gradual transition in some cases has been held by this Court to be a valid and necessary consideration. New Jersey v. New York, 283 U.S. 473, 51 S.Ct. 519, 75 L.ed. 1176; Georgia v. Tennessee Copper Co., 206 U.S. 230, 27 S.Ct. 618, 51 L.ed. 1038; People of the State of New York v. State of New Jersey and Passaic Valley Sewerage Commissioners, 256 U.S. 296, 41 S.Ct. 492, 65 L.ed. 937.

The Supreme Court of Florida having deferred judgment, petitioner's request for certiorari is premature inasmuch

as such writ is applicable to final judgments. Fox Film Corp. v. Muller, 55 S.Ct. 444, 294 U.S. 696, 79 L.ed. 1234, certiorari dismissed, 56 S.Ct. 183, 296 U.S. 707, 80 L.ed. 158; Bruce v. Tobin, 38 S.Ct. 7, 245 U.S. 18, 62 L.ed. 123; Urie v. Thompson, 69 S.Ct. 1018; 337 U.S. 163, 93 L.ed. 1282.

Petitioner cites five cases in his brief for the proposition that this Court has authority under Title 28, United States Code, to enter its own judgment in a case of this nature, in that "in the past (it) has issued such judgments, especially in situations where a state court has failed to act in conformity with a prior mandate of this Court." The cases cited for such proposition are: Martin v. Hunter's Lessee, 1 Wheat. 304, 4 L.ed. 97; McCulloch v. Maryland, 4 Wheat. 316, 4 L.ed. 579; Magwire v. Tyler, 17 Wall. 253, 21 L.ed. 576; Williams v. Bruffy, 102 U.S. 248, 26 L.ed. 135; and Stanley v. Schwalby, 162 U.S. 255, 40 L.ed. 960, 16 S.Ct. 754.

A valid distinction exists between each of the cited cases and the case at bar. In both Martin v. Hunter's Lessee, supra, and Williams v. Bruffy, supra, the cases were appealed to this Court and subsequently reversed and remanded with directions to the Virginia Court of Appeals. In both cases the Virginia Court of Appeals questioned the authority of this Court to issue such mandate. In the Martin case, the Virginia Court said, "This Court is unanimously of the opinion that an appellate power of the Supreme Court of the United States does not extend to this Court . . ." In the Williams case, the same court said "For these reasons this Court, with highest respect and consideration for the Supreme Court of the United States, must decline to take any further action with respect to the mandate of said court."

In Magwire v. Tyler, supra, the case was remanded by the United States Supreme Court on second hearing to the Supreme Court of Missouri with directions. The Supreme

Court of Missouri carried out the minority portion of the mandate and then ignored any authority of this Court in such regard by dismissing the case. On the third hearing of this case this Court said, "The Missouri Supreme Court has no power to evade or reverse the United States Supreme Court."

It is true that in the case of McCulloch v. Maryland, supra, this Court entered its own judgment but it is equally true that such judgment was not the result of the refusal of a state court to obey a prior mandate of this Court.

Stanley v. Schwalby, supra, is cited by petitioner as a case wherein this Court remanded a case and ordered its own judgment (see footnote 1, page 2, Petitioner's brief). It is to be noted, however, from a reading of the opinion of this case that the judgment was reversed by this Court and the case was remanded "with instructions."

Respondents consider it equally important to point out that the aforementioned cases cited by petitioner in his brief range chronologically from 1816 to 1895, and deal with a variety of subjects, none of which are germane to the subject at hand: "A treaty and title to land" (Martin v. Hunter); "Federal Banks v. State Taxation" (McCulloch v. Maryland); "Right to title of real property involving a Secretary of Interior's ruling" (Magwire v. Tyler); "Debts and rights of citizens of northern and southern states after the Civil War" (Williams v. Bruffy); and "Right of title to real property occupied by Federal troops" (Stanley v. Schwalby).

Not only are the points for which the above cases are cited distinguishable from the case at bar but the facts involved and the entire surrounding circumstances in each of the cases are far afield from the interest at hand. The above cases are cited by petitioner in his brief for the

proposition that this Court should consider that the Supreme Court of Florida has disobeyed this Court's mandate of March 12, 1956, and should therefore enter its own judgment. A careful study of the proceedings of the Supreme Court of Florida subsequent to the issue of this Court's mandate of March 12, 1956, will show that the actions of the Supreme Court of Florida have been completely dissimilar to the actions of the inferior courts in the cited cases. The Supreme Court of Florida has neither disobeyed nor evaded the mandate of this Court. Such cases did not involve the public interest and welfare of a sovereign state to the degree manifest in the case at bar and should therefore have no applicability or persuasion to the decision of the Supreme Court of Florida which is predicated entirely on the grounds that it has the duty, responsibility, and the inherent authority to act in such a way as to avoid public mischief in this state. The Supreme Court of Florida has indicated its willingness to carry out this Court's mandate without causing public mischief.

On June 4, 1956, this Court entered an order in the case of United Automobile, Aircraft and Agricultural Implement Workers, et al v. Wisconsin Employment Relations Board et al, 351 U.S. 266, 76 S.Ct. 794, 100 L.ed. 1162 and, where applicable to the instant case, stated: "the dominant interest of the state in preventing violence and property damage cannot be questioned. It is a matter of genuine local concern. * * *. The states are the natural guardians against public violence. It is the local communities that suffer most from the fear and loss occasioned by coercion and destruction. We would not interpret an Act of Congress to leave them powerless to avert such emergencies without compelling directions to that effect. We hold that Wisconsin may enjoin the violent Union conduct herein involved. The fact that Wisconsin has chosen to entrust its powers to a Labor Board is of no concern to this Court."

This case clearly recognizes the constitutional powers of of states to exercise reasonable and proper authority to avoid disorder, and, in the language of this Court, to act as "the natural guardians of the people against violence."

The only distinction which may be made in the Wisconsin case, supra, and the case at bar, is that in the Wisconsin case this Court was considering a conflict between an Act of Congress and a Wisconsin state statute providing administrative safeguards. In the case at bar there is no conflict between Federal and state laws, since Congress has not enacted any legislation on the subject of state school segregation, and the only apparent conflict is whether this Court's previous pronouncements on the issue of racial segregation in public institutions of learning should be interpreted and enforced in a manner that refuses to recognize, and over-rides, the inherent powers of the State of Florida to safeguard the peace and welfare of its people through the administrative processes provided by state constitutional and legislative provisions, and by the application of equitable principles in the public interest by the Supreme Court of Florida.

In certain areas of government, States' rights have been surrendered to the Federal Government, but in such cases the avenue by which the United States Supreme Court enters the State Judiciary is by certiorari, a privilege granted to the Supreme Court by the States. In no instance has the Supreme Court been given the "right" to reply to certiorari except by "mandate" and "direction" to the state courts. Should the United States Supreme Court issue a direct order to the Board of Control and by-pass the State Court, it would not only be usurping its power but it would deny the people of the State of Florida their rights to the judicial discretion which might otherwise be exercised by the Supreme Judiciary of this State, a body which is far more familiar with the problems of the people of Florida than any other court in the Union.

It is a fundamental principle of law that a state has all the sovereign powers of an independent nation over all persons within its territorial limits subject to the restraints of the Federal Constitution. Ryan v. State, 58 S.Ct. 233, 302 U.S. 186, 82 L.ed. 187; Parker v. Brown, 63 S.Ct. 307, 317 U.S. 341, 87 L.ed. 315.

The dual nature of the American Government, while simple in theory, frequently presents practical complexities which are difficult to harmonize. People v. Daly, 105 N.E. 1048, 212 N.Y. 183. No boundary separating the field of state and federal control can be marked out for the reason that in many cases they overlap, and for this reason it may be difficult at first to determine which court has authority to operate within the state. Konkel v. State, 170 N.W. 715, 168 Wis. 335.

Under the Tenth Amendment, the Constitution recognizes the necessary independent existence of the states within their proper spheres and their attendant independent authority. Hoyle v. N.Y., 73 A. 754, 82 Conn. 352. In this regard the *Federalist Papers* contain the following statement:

> "The powers delegated by the proposed constitution to the federal government are few and defined. Those which are to remain in the state government are numerous and indefinite. The former will be exercised principally upon external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several states will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement and prosperity of the state."

Thomas Jefferson's first Inaugural Address stressed the

importance of permitting the individual states to manage their internal operations when he stated:

> "I will compress them (said the President) within the narrowest compass they will bear, stating the general principle, but not all its limitations. Equal and exact justice to all men, of whatever state or persuasion, religious or political; peace, commerce, and honest friendship with all nations, entangling alliances with none; *the support of the State Governments in all their rights, as the most competent administrations for our domestic concerns and the surest bulwarks against anti-republican tendencies*; . . ." (emphasis supplied)

The importance of this federal-state relationship was noted by Chief Justice Marshall in McCulloch v. Maryland, 4 Wheat. 316, when he stated:

> "No political dreamer was ever wild enough to think of breaking down the lines which separate the states and of compounding the American people into one common mass."

George Washington pointed up this important consideration when he stated in his Farewell Address:

> "If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the constitution designates. But let there be no change by usurpation, for, though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use may at any time yield."

Permitting the individual state to handle without interference matters of strictly local concern is in harmony with the principle that every state as an integral member of the

Federal Nation has the duty to aid in the preservation of the Nation and to that end to do everything within its means and power. State ex rel American Legion 1941 Convention Corporation of Milwaukee v. Smith, 293 N.W. 161, 235 Wisc. 443.

It is equally true that the Federal Government owes the same obligation to the states to aid in the preservation thereof by contributing to the peace and harmony therein. While there are two distinct sovereignties, federal and state, they are designed and expected to be adapted to each other to work together in harmony, the Federal Government exercising those powers granted to it by the States, each mutually and independent of the other. See Feldman v. United States, 64 S.Ct. 1082, 322 U.S. 487, 88 L.Ed. 1408, 154 A.L.R. 982; In re Opinion of the Justices, 8 N.E. 2d 753, 297 Mass. 567; State ex rel Gibbs v. Gordon, 138 Fla. 312, 189 So. 437. State governments possess all the powers incident to political government and not delegated to the United States. See Bute v. People of State of Ill., 68 S.Ct. 763, 333 U.S. 640, 92 L.Ed. 986.

Although the sovereign states have delegated exclusive jurisdiction in certain enumerated cases, such has not been done in the field of education and, hence, in this and other such matters the dual sovereignty of the State and the United States continue to exist. See Westfall v. United States, 47 S.Ct. 629, 274 U.S. 256, 71 L.Ed. 1036. The line of operation between the United States and the several states as to jurisdiction and sovereignty is clear in its constitutional aspects and, although it is sometimes difficult to define, it is sharply maintained. In re Opinion of the Justices, supra.

It is and has been established policies of both State and Federal Governments to treat possible conflicts between their powers in such a manner as to produce as little

conflict and friction as possible. Bute v. People of Illinois, supra. Where two sovereignties operate in the same area, one with delegated and the other with reserved powers, if conflicts arise in the exercise of some spheres of power, they should be resolved in a way that neither sovereignty will be hampered in the exercise of a power in which the public welfare requires that it be the supreme exponent. See In re Briley's Estate, 155 Fla. 798, 21 So. 2d 595.

The state and federal government should operate in perfect harmony. Penn v. Tollison, 26 Ark. 545, 577. This Court considered the importance of this maxim when, in Burgess v. Seligman, 107 U.S. 20, 2 S.Ct. 10, 27 L.ed 359, it stated: "For the sake of harmony and to avoid confusion, the Federal Courts will lean towards an agreement of views with the state courts if the question seems to them balanced with doubt. Acting on these principles, founded as they are on comity and good sense, the Courts of the United States, without sacrificing their own dignity as independent tribunals, endeavor to avoid, and in most cases do avoid any unseemly conflict with the well-considered decisions of the state courts."

Petitioner would have this Court assume that the Supreme Court of Florida has arbitrarily flouted its mandate. This is a subtle but oft-used method of influencing another to gain an objective by suggesting that such other's rightful prerogatives and authority have been flagrantly violated by the one sought to be worsted. It is an appeal in part to pride and the attribute of superiority. However, we do not believe this high Court will be so subtly and psychologically digressed from the law to an unwarranted assumption that its superiority has been flouted.

This Court will recognize that the Supreme Court of Florida is conscious of its duty and responsibility in the case; that the Florida Court after due investigation is

seriously concerned with factual conditions other than race; and that it is not flouting but it is attempting to avoid untoward events and protect petitioner and others from a premature and mischief provoking contretemps.

This Court we believe will not arrogantly brush aside as impertinent a delay by the Supreme Court of Florida based on factual considerations and local conditions. Courts do not move on predicates which allow no consideration of facts or conditions. Equity is not arrogant. It proceeds cautiously in the light of facts and the public interest.

We sincerely believe that in this dilemma where there is in process an experimentation in seeking to adjust legal rights with customs, usages, traditions, prior laws, the high Court of this Nation will welcome the counsel, the prudence, and the careful considerations of a state appellate court unless and until it is shown that the latter is acting in bad faith. We submit bad faith is not shown on the part of the Supreme Court of Florida by petitioner, rather petitioner in his extreme desire to win his point at all costs would have this great Court completely disregard and peremptorily strike down the very moderate, mild and reasonable determination of the Florida Court that some delay is expedient for reasons other than race.

## PART II

## FACTUAL CONSIDERATIONS

The question of the immediate admission of a student of the Negro race to the University of Florida cannot be considered as isolated from broad general considerations involving both legal and factual matters which result in the social dilemma of racial segregation.

The prime issue here is one of fact, not law. The two should not be confused. This Court overlooked this consideration when it stated in its March 12, 1956, opinion in this case (State of Florida ex rel. Virgil Hawkins vs. Board of Control, 350 U.S. 413, 100 L.ed. 486, 76 S.Ct. 464), that it had already ordered the admission *(as a matter of legal right)* of negroes to institutions of higher learning in three other states *and that therefore "there is no reason for delay" in Florida.*

Such an inference assumes without proof of any kind that the factual situation some years ago in university integration cases in other states is identical to the factual situation in Florida in 1956.

To rely on a previous legal ruling as to constitutional rights in Oklahoma as authority for an assumption as to factual conditions in Florida is illustrative of the common fallacy in logic termed "irrelevant conclusion" or possibly, if it is blindly adhered to, *argumentum ad baculum* (appeal to force).

In its opinion in this case filed by the Supreme Court of Florida on March 8, 1957, the court said:

> "It is unthinkable that the Supreme Court of the United States would attempt to convert into a writ of right that which has for centuries at common law and in this state been considered a discretionary writ;

nor can we conceive that that court would hold that the highest court of a sovereign state does not have the right to control the effective date of its own discretionary process. Yet, this would be the effect of the court's order, under the interpretation contended for by the Relator. We will not assume that the court intended such a result."

Speaking further the court said:

"We cannot assume that the Supreme Court intended to deprive the highest court of an independent sovereign state of one of its traditional powers, that is, the right to exercise a sound judicial discretion as to the date of the issuance of its process in order to prevent a serious public mischief."

In support of these contentions and its findings that the writ sought by the petitioner in this case should be delayed in the interest of the public welfare, the Supreme Court of Florida reviewed briefly the facts developed by a commissioner appointed by the court and submitted to it. It took note of the fact that although the Relator (petitioner) had due notice and an opportunity to be heard at all hearings scheduled by the commissioner, he did not appear nor did he attempt to present any testimony in support of his right to immediate admission. The voluminous testimony, surveys and factual findings submitted to the Florida Supreme Court by its commissioner presented an overwhelming case in favor of caution and delay in the issuance of a writ which would order the petitioner's admission to the University of Florida. All of this testimony and factual material were properly presented to the Supreme Court of Florida through its commissioner and are now a part of the record of this case and available for the information and guidance of this Court.

The Supreme Court of Florida reached the conclusion that its "study of the results of the survey material to the

question here, and other material evidence, leads inevitably to the conclusion that violence in university communities and a critical disruption of the university system would occur if Negro students are permitted to enter the state white universities at this time, including the Law School of the University of Florida, of which it is an integral part. This Court has an opportunity to prevent the incidents of violence which are, even now, occurring in various parts of this country as a result of the states' efforts to enforce the Supreme Court's decision in the Brown case."

The allusion to general conditions prevailing throughout the country and the realities of the situation are recognized in a book which has come to be considered authoritative on racial matters. This book, "An American Dilemma," by Gunnar Myrdal, page 58, makes the following statement:

> "This attitude of refusing to consider amalgamation—felt and expressed in the entire country—constitutes the center in the complex of attitudes which can be described as the 'common denominator' in the problem. It defines the Negro group in contradistinction to all the non-colored minority groups in America and all other lower class groups. *The boundary between Negro and white is not simply a class line which can be successfully crossed by education,* integration into the national culture, and individual economic advancement. The boundary is fixed. It is not a temporary expediency during an apprenticeship in the national culture. It is a bar erected with the intention of permanency. It is directed against the whole group." (Emphasis supplied)

And

> "*Almost unanimously white Americans* have communicated to the author the following logic of the case situation which we shall call the '*white man's theory of color caste.*' (Emphasis supplied)

"(1) The concern for 'race purity' is basic in the whole issue; the primary and essential command is to prevent amalgamation; the whites are determined to utilize every means to this end.

"(2) Rejection of 'social equality' is to be understood as a precaution to hinder miscegenation and particularly intermarriage.

"(3) The danger of miscegenation is so tremendous that the segregation and discrimination inherent in the refusal of 'social equality' must be extended to nearly all spheres of life. There must be segregation and discrimination in recreation, in religious service, in education, before the law, in politics, in housing, in stores and in breadwinning."

Myrdal throughout his book clearly evidences a genuine concern for the plight of the Negro in America but we feel that the tenor of his book is in sharp contradiction to the reasoning and arguments of the petitioner in this case who insists that his right to enter the University of Florida is personal and present, should be granted immediately, and no other factors should be considered. In this connection we agree with Myrdal's statement on page 61 of his book cited above:

"Negroes are in desperate need of jobs and bread, even more so than of justice in the courts, and of the vote. These latter needs are, in their turn, more urgent even than better schools and playgrounds, or, rather they are primary means of reaching equality in the use of community facilities. Such facilities are, in turn, more important than civil courtesies. The marriage matter, finally, is of rather distant and doubtful interest."

The truth of Myrdal's assertion as to the almost total opposition of white citizens to an enforced integration of schools at any level is confirmed by an abundance of reliable

evidence dealing specifically with Florida which will be dealt with subsequently in this brief.

Voicing this opposition as an official expression of the feelings of the white people of Florida, the Florida Legislature adopted a resolution of interposition in its 1957 session. Said resolution has been made a part of and is attached to this brief as Appendix B.

This resolution which is not without historical precedent, we construe to be the strongest possible form of protest which can be legally filed by the people of a sovereign state in opposition to an action of any branch of the Federal government which the people consider to be inherently wrong. We do not view this resolution as being an unlawful defiance of the authority of this Court but we do respectfully submit that it is an official, sincere expression of the feelings of a free people which should be given due consideration by this Court in determining the wisdom and authority of the action of the Supreme Court of Florida in delaying the issuance of its writ of mandamus which would compel petitioner's immediate admission to the University of Florida.

Further concern because of racial problems in Florida is reflected in a report of an Investigative Committee of the Florida Legislature. This report which was submitted to the Florida Legislature on May 31, 1957, is made a part of and attached to this brief as Appendix C.

The report contains the following statement relating to the bona fides of this case.

> "In the opinion of counsel, the record discloses that certain attorneys for the NAACP have engaged in unethical conduct in violation of the canons of ethics governing the practice of law in Florida. It likewise discloses the very strong possibility that some of the

witnesses before this committee committed perjury. Therefore, it is recommended that a copy of the pertinent testimony be made available to the proper officials of the Florida Bar and the state attorneys having jurisdiction where the hearings were held, with the request that the same be carefully studied and if violations of law or ethics have occurred that proper proceedings be instituted against any such offender.

"The Florida State Teachers Association has concerned itself with integration law suits. It, together with the NAACP, has been one of the prime movers in instigating the filing of the Virgil Hawkins case, to which the Florida State Teachers Association has been one of the principal financial contributors. The record shows that Virgil Hawkins and the other plaintiffs involved in this case had virtually no control over the course of this litigation and absolutely no financial responsibility for the same, the case having been handled and controlled entirely by persons and organizations other than the individual plaintiffs.

"A much more damaging report as to the NAACP's activities would undoubtedly be dictated by the record except for the fact that all records of NAACP have been secretly removed from the jurisdiction of this state for the express purpose of preventing this committee from examining the same."

Overtones of racial unrest, violence and the sincere opposition of law-abiding citizens throughout the country to the immediate implementation of this Court's decision in the Brown case are apparent on every hand and must be considered in the realm of general knowledge worthy of the consideration of this Court.

An article in the June 15, 1957, issue of the Saturday Evening Post written by John Bartlow Martin entitled "The Deep South Says Never" appears to be a factual report of the general attitude toward integration of the races throughout the South. In this article Mr. Martin says,

"Segregation is not a principle upheld by louts and bullies. It is viewed as inherently right by virtually every white person in the four-state South of which we speak."

Although Mr. Martin's study did not include Florida specifically, we know his findings are to a large extent equally applicable in this state.

Florida's specific condition in this regard is the subject of an exhaustive and objective study of sociological, physical and psychological conditions relevant to the University of Florida and Florida's system of higher education made by the State Board of Control. This study which was the basis of the order of the Supreme Court of Florida which petitioner seeks to circumvent is too bulky to include in its entirety in this brief.

We feel, however, that it is important to bring to the attention of this Court certain portions of said study so that it may be properly advised as to the difficulties at hand without having to refer to the record which is voluminous. This can best be accomplished through statements of witnesses at the hearing which summarizes the findings of the study and their own conclusions.

The sworn testimony of the Honorable Fred H. Kent (who was chairman of the State Board of Control at the time of the hearing before the Commissioner appointed by the Supreme Court of Florida) includes the following statement:

"A. The Board of Control, and all of its members, definitely are of the opinion that we are confronted with a major problem posed by the decision of the Supreme Court decreeing what—or rather, I might say, decreeing that a Negro is entitled to be admitted to the University of Florida and the Florida State University. Our major problem at the present time has been to determine

what the effect of admitting such a Negro to either of those institutions would be. We have been trying to study that problem for the purpose of presenting the various aspects of it to the Supreme Court of Florida in this particular proceeding. We haven't reached that phase at which we would try and solve the problems, because we don't know yet exactly what we are going to be confronted with, what the Court is going to decide. Our study data being limited to what problems will have to be decided and not what the solution of them will be.

I might say that I have been on the Board of Control for three years, Chairman of it for approximately a year, and that has been unquestionably the biggest problem that has confronted us during that time.

Q. Could you make a statement to the Court pointing out what, in your opinion, are the most serious problems of administration which will be created if Negroes are admitted to the white universities?

A. Yes, but before I do, I would like to qualify myself to the extent of showing that my thinking is controlled by concern for the welfare of the University of Florida, Florida State University, and Florida A. & M. University, and not by prejudice against members of the Negro race or because I am trying to avoid having my children attend the University of Florida as an integrated school. I have four children, one girl, and three boys. My two oldest boys I have sent to the Phillips Exter Academy at Exter, New Hampshire, which is a preparatory school and does not enforce segregation. My second son is in his third year there. My oldest son graduated at Exter and then went to Yale, which does not enforce segregation, and graduated from that University. My daughter went to Bryn Mawr College, Bryn Mawr, Pennsylvania, which does not enforce segregation. Therefore, I believe that those facts indicate that my thinking is not controlled by prejudice towards integration, but is controlled by what might happen at the University of Florida if we enforce integration under existing facts—existing circumstances. I am

sure that an examination of every one of the members of the Board of Control would demonstrate that not any one of them is any more prejudiced than I am.

At the beginning of my statement I want to say that copies of these two volumes entitled "Study on Desegregation, Part I and Part II" have been furnished to me and all members of the Board of Control. I have studied both volumes carefully and am prepared, I believe, to stand a rather thorough examination or cross-examination on them; that is, as to their general substance and as to the conclusions to be derived from them. I would not be able to remember the exact figures appearing in them, because there are too many. I have studied the summaries which are set forth in the first 33 pages of Vol. I and the first 11 pages of Vol. II, and wish to state under oath that I believe that they are correctly and reasonably arrived at and that I concur in the conclusions and statements of opinions therein expressed.

I have been authorized by every member of the Board of Control to make that statement on his behalf. I further have been directed to state that it is the unanimous opinion of the Board of Control that the administrative problems summarized on pages 31 and 32, of Part I of that survey, are very real problems which our Board fears may create unsolvable problems and which may result in great injury to the University of Florida if we are forced to meet them forthwith. Those problems are so well explained by the summaries and conclusions set forth in those two volumes which have been placed in evidence and are, in fact, so self-explanatory that I will not expand on them, except as they relate to other thoughts which I will express.

I further want to say that I have listened to Dr. Culpepper's explanations of and comments on those exhibits and Mr. Skelton's explanations of and comments thereon, and I am completely in accord with all of the statements made by both of them. I do want to testify under oath further that as Chairman of the Board of Control that I consider each of the problems

listed on pages 31 and 32 as a very real problem and one which is potentially of great danger to the welfare of the University of Florida.

I would like to testify to certain other problems which we on the Board of Control fear most and which are only indirectly pointed to by the printed surveys filed in evidence today; yet, they are demonstrated by that survey to be very real. We on the Board are concerned particularly by three additional major problems. First, the safety of the students in our State supported institutions, and I refer to their physical and moral safety. Second, the financial welfare of our institutions. And, third, the academic standing or standard of those universities.

Dealing with the first, I should like to refer to the safety of the students at our State owned institutions. The recent incident at the University of Alabama has shown what can happen where only one Negro enters a college such as the University of Florida. Those surveys filed here today show: one, that the parents of Negro high school seniors, if given the opportunity to do so, next year would send 369 Negro children to the University of Florida and 205 to Florida State University; second, that of the Negro students now at Florida A. & M. approximately 250 would transfer to F. S. U. and 310 to the University of Florida if permitted to do so. That means that we could anticipate an influx of from 450 to 500 Negroes at Florida State University and from 675 to 700 Negroes at the University of Florida. We fear that the influx of so many Negroes would multiply the chance of disorder, fights, riots, and attendant trouble.

This morning's paper describes an incident at Delray Beach which shows that the same thing which happened at the University of Alabama can happen in Florida. It points out that last week the municipal authorities in Delray provided that the Negroes could use the beaches at Delray along with the white people. On yesterday the Police Department at Delray Beach is reported as having had to disperse a riot or dis-

turbance caused by white teen age children who tried to make the Negroes leave the beach. So if teen-agers do that at Delray Beach it appears to be reasonable to expect that they might do the same thing at the University of Florida. Further, the surveys filed here show that a substantial number of students and a substantial number of parents of students state that they expect to take action, which apparently is positive action, to persuade Negro students to leave the University or make it so unpleasant for them that they will move out of a dormitory room or out of a class or out of a cafeteria or otherwise stop using the facilities of the University of Florida. The only assumption that we can reach is that by making it so unpleasant for them that they would have to move they mean to resort to violence or some equally irritating action which would undoubtedly result in disorder.

Next, we cannot overlook another unpleasant danger. On March 27, 1956, Congressman Williams of Mississippi filed in the Congressional Record for 1956, Vol. 102, No. 54, at page 5092 certain statistics compiled from the official records of the United States Department of Justice and the District of Columbia Police Department and the Department of Public Health, which demonstrates conclusively that integration of the races poses a real problem of public safety, public health, and danger to public morals of our State students. I believe that the Court will take judicial notice of the contents of the Congressional Record, so I don't offer it in evidence; but I do respectfully ask that it be studied.

If I may, I would like to illustrate the difference in morals between the students in the white and colored institutions by giving an example of an occurrence that is unpleasant but I think it should be considered here. We don't have here a record of the total number of cases in which this has happened, but I feel that they are certain facts which illustrate the different moral standards of the two races which are known to members of the Board because they come before us for

consideration. We have had a few isolated instances at both of the white institutions in which unmarried girls have left school either voluntarily or have been asked to leave because they became pregnant.

Let me emphasize that with a total enrollment of approximately 15,000 the two white universities have had only isolated occurrences of that sort. Contrasted with the situation at the white colleges we have had a very substantial number of young, unmarried Negro women who have left school for that reason at Florida A. & M. University, which is much smaller, having an enrollment of only about 2600.

Regarding the plaintiff Hawkins, we have had affidavits furnished to our Board which indicate that Hawkins is the possessor of a violent and apparently ungovernable temper, as was indicated by instance in which he is alleged to have inflicted severe physical punishment on a student under his tutelage. We believe that such a man if admitted to Florida University under existing conditions would be apt to create trouble.

Concerning the second point which I raised, that is, the financial welfare of our Universities, we have several reasons for fear. First, the surveys filed in evidence today demonstrate that we could expect that, first, 41% of the parents of students now in our white universities would cause them to drop out of those schools or transfer to another school; and that 62% of the white 1956 high school graduates would send their children elsewhere than to the University of Florida or Florida State University if we have enforced integration. That prospective loss of revenue speaks for itself.

Second, there are other prospective losses of revenue. For instance, we receive six million dollars, or about 25% annually, of our operating revenue at the University of Florida from grants made to that institution for the performance of work for which it is exceptionally well equipped. Those grants come because we have exceptional students and exceptional professors. If we lose the indicated number of stu-

dents, plus the 7% of professors who say that they will leave, and if our revenue is reduced so substantially that we won't be able to pay prices for salaries so as to keep our present most highly paid professors, we might very well lose a big percentage of that personnel and of those grants.

Third, we have built at the University of Florida several dormitories, which are being paid for from revenue certificates. We are about to build others that will cost three million dollars. If Negroes move into them it seems clear from our surveys that the whites intend to move out. It appears that those who say they won't move probably will be subjected to such ridicule and teasing that they, too, will move ultimately. The history of Negroes moving into white living areas demonstrates that that action is to be expected, for experience shows that when a Negro moves into an area the property values fall and the whites move out. If that happens to our dormitories we will face ruin financially. That is the only way we have found to finance the building of them. If we default on the ones that we have built, we will not be able to finance any more.

Next, this Court and the Supreme Court of Florida know—in fact, it is a matter of general public knowledge—that the State supported universities in the South have had a desperately hard time surviving financially up until the past ten years. That has been true in Florida. Legislators, generally, simply have been disinclined to appropriate funds for higher education. During the past decade, and possibly the past two decades, the tide has turned and has begun to flow slowly in the opposite direction. We now appear to be on the threshhold of real progress in building more and better colleges and being able to provide better salaries for our heretofore underpaid professors and administrative personnel. With enforced racial integration the tide will, I am afraid, turn the other way once more—and with a vengeance.

Indicative of the thinking of the politicians of this State is our very recent primary in which we nom-

inated a candidate for Governor. Almost the only issue in that campaign was the maintenance of segregation. Each candidate tried to outdo the other in insisting that he could and would best maintain segregation. Each pledged himself to maintain it. That shows two things: one, each realized how intensely the white people want to maintain segregation; and, two, each agreed to try to do his best to do so. Assuming that those persons elected to the legislature feel the same way, it seems rather evident that the legislature is not going to appropriate much money for integrated universities.

We have had a hard time before. We will really be in trouble if we have integration in our universities, for then those who have fought us in the past will have reenforcement on their side so great that we fear that we won't be able to overcome it. I am afraid that we will be given only niggardly financial support; that we will lose our top instructors because we won't be able to pay what they must earn in order to stay here; and that our universities will face dry rot and ruin. This should be considered along with that problem. In the past our alumni have been our greatest help in getting funds from the legislature.

The survey filed today indicates that we will lose the support of 52% of those alumni if we have integration. Without them we will be impotent when we appear before the legislature asking for funds.

The third point which I have suggested that we are particularly concerned with is the academic standing or standards in the University of Florida in the event of enforced integration. I call your attention again to Table 4, on page 29 of Vol I, filed with you today, but I am not going to testify at length regarding it because Dr. Culpepper has already covered that point so ably. I do want to point out, however, that it shows by indisputable statistics how poorly prepared and how ill qualified the Negro high school graduates are when compared with the white high school graduates. For the past several years we have set a standard of admissions at the University of Florida based on the

admission of only those students in the top 75% of their classes. That was not by rule of the Board of Control, but was handled on an advisory basis by administrative officers at the University. This past year the Board of Control, for the first time, recognized the need for such a restriction and at both the University of Florida and Florida State University approved entrance requirements which limited attendance, except in exceptional cases, to high school graduates who would be in the top 60% of their class.

Negroes are admitted at Florida A. & M. University if they have a high school diploma. If they had to comply with the present entrance requirements at the University of Florida only about eight percent of the Negro high school graduates could meet those requirements. It might be said that such entrance requirements, therefore, would protect the University of Florida and Florida State University from having a decline in their academic standards because of an influx of poorly prepared Negroes; and it should.

But the question then arises, "What will be done about Florida A. & M. University?" First, will the State of Florida continue to run a university for Negroes who cannot pass entrance exams at the University of Florida and Florida State University, but provide no school for whites who cannot pass such an exam. That would be a clearcut case of discrimination in favor of Negro students and against white students.

Second, will we have two first-class universities and one admittedly sub-standard one. What value will a degree from such a sub-standard university be? For how long could we get instructors and students to attend such an admittedly sub-standard university?

Our Board, after considering those questions, concluded that if any one of the three universities is forced to have racial integration that we immediately would put all three of them on the same basis as to admissions. Either all three will have the same high admission standards and consequent high academic standards, or all three will have no admission requirements and a correspondingly low academic standard. We

have left it up to the State Board of Education to approve or disapprove of our action. If it approves it, we then would set admission standards. I believe that they will be set on the same level at all state universities and that they will be set at about the level now maintained at the University of Florida.

That would be very bad for the prospective Negro student and would probably result in Florida A. & M. University either going out of existence entirely or becoming a college in which about 90% of the students would be white. Integration unquestionably would result in the abandonment of substantially all of the graduate work now being offered at Florida A. & M. University because it would be an unnecessary duplication of the same courses offered at the University of Florida or at Florida State University.

There are a few other points I would like to make. The first is this. The United States is being outstripped today in its race to educate and develop scientists, engineers, doctors, etc., by the Soviet—for two reasons: first, the Soviet not only subsidizes their bright young students, they make them go to college. We, in this country, don't subsidize ours. We don't even allow the child's parents an income tax deduction for educating his children; and we certainly don't make them go to college. Consequently, we find that we are losing a surprisingly large percentage of our most brilliant high school graduates, who simply don't go to college at all. We even now are looking for ways and means to get him in college.

I discussed that problem with Dr. Allen, Vice-President of the University of Florida, only last week. I find that we are trying to make college attractive. We are trying to make them—that is, those high school graduates and their parents realize that a college education is a must. If instead of having a State University which is a glamorous and attractive place we have one that bears a stigma, such as is indicated it will bear in the minds of so many parents of high school graduates by these statistics filed today, we will lose more and more of these fine students—with a consequent loss to our Country.

Secondly, I want to emphasize the very important part that our Agricultural and Engineering Schools at the University of Florida have played in economic development of Florida. Our farmers, cattlemen, citrus growers, businessmen all recognize that fact: The loss of such a great asset, or even the severe crippling of it, as might be occasioned by integration as indicated by these surveys, would be a blow which would create irreparable harm to the economy of our State.

Third, I don't know how important it is, but if Negroes are admitted to the University of Florida I assume that they will be eligible to participate in intercollegiate athletics. Florida is a member of the Southeastern Conference. Many of the colleges which are members of that group prohibit games with colleges which permit Negroes to play on their team. Considerable confusion and monetary loss, therefore, would be occasioned from that source.

Briefly, our Board's position, as I understand it, is this: the Supreme Court of the United States in the case of *Hawkins v. The Board of Control*, found that "a Negro has a right under the Constitution of the United States to attend a graduate school of the University of Florida." The gist of that decision is that that right cannot be denied him solely because of his being a member of the Negro race. That, however, does not mean that he must be allowed to attend that University.

The Supreme Court of Florida, in the case of *Thornhill v. Kirkman, 62 So. 2d 740*, held that "liberties guaranteed by the Bill of Rights are not absolute, but must be regulated in the public interest."

The Supreme Court of the United States has recognized and approved a decision of the Supreme Court of Florida which held that "all personal and property rights are held subject to the police power of that State, and that neither provision of the State nor the Federal Constitution will intercept regular and lawful exercise of such power." That was in the case of *Mayo v. Polk County, 169 So. 41*, affirmed by the Supreme Court of the United States, *81 Law Ed. 376*. In it the

Supreme Court of Florida said, "All personal and property rights are held subject to the police power of the State, and neither the Fourteenth Amendment nor corresponding provisions of the State Constitution will intercept the regular and lawful exercise of this power."

The Supreme Court of the United States indicated its approval of the decision in another case which arose in Florida, but this time in the District Court of the United States for the Northern District of Florida, and affirmed by the Fifth Circuit Court of Appeals, in which the Court described the broad police power vested in a State. That is the case of *United Enterprises v. Dubey, 128 Fed, 2d 843, 87 Law Ed. 537.* In that case the Court said that "a State, by legislature under its police power, may provide for the protection of the public health, the public morals, and the public safety, unless Congress has preempted the particular field in question, or unless the State transcends its legitimate authority and undertakes the regulation of Interstate Commerce by imposing burdens upon it."

The States of the Union have never relinquished their sovereign power so as to protect their citizens by appropriate legislation. It appears to me, therefore, that it would neither be unreasonably arbitrary or capricious for the State, represented by our Board, in the exercise of its police power, to forbid racial integration in the University of Florida or the other institutions under our control, in view of the evident threat to the public safety, to the public morals, and to the public health. And the Board of Control expects to continue to follow that policy until directed to do otherwise by the Supreme Court of Florida."

At the same hearing, Dr. J. B. Culpepper, Executive Secretary for the State Board of Control, who had the responsibility for making the survey on the subject of desegregation at the University of Florida which is a part of this record, testified:

"Q. Please state your name.

A. My name is J. B. Culpepper. I am serving presently as Executive Secretary for the State Board of Control of Institutions of Higher Learning.

Q. In that capacity, Dr. Culpepper, have you had the responsibility for making a survey or study on the subject of desegregation at the University of Florida?

A. Yes, I have, and we have applied it not only to the University of Florida but also to the Florida State University and to the Florida A. & M. University.

Q. Will you amplify as to your reasons for including the other two State Universities in this study?

A. The reason that we have included all of the State Institutions under the direction of the Board of Control is that we wanted to make a study which was approached objectively and which would reveal to the Board clearly and conclusively precisely what problems, if any, would be encountered in moving toward desegregation. We felt that the study ought to be as broad a study as was necessary to bring together those conclusions which would be helpful to the Board and to the Court. Consequently, in making plans it seemed to us wise to make the following studies. We did a study of the facilities of the three institutions with regard to housing, with regard to class rooms, the health services, the library facilities, food services, and recreation. We felt that we ought to take a look at the present admission policy with regard, particularly, to the impact of the policy upon the growth of the Institutions and what would be the effect in relation to possible additional students that would come because of desegregation. We felt that we ought to project the anticipated enrollments through to 1960, thereby getting some idea as to what problems we would encounter with an ever increasing enrollment. We felt that we ought to survey the students of the Universities, the faculties of the Universities, the parents of the Universities, and the alumni of the Universities to find out what their attitudes are toward desegregation. In order to project the study to the future and to get as much additional information as possible to show problems that might be involved, we also surveyed parents

of high school seniors, both Negro and white, throughout the State. Those are the studies that were made and we attempted to get at them as fairly and as forthrightly and as honestly as we knew how so that information would be available to all concerned.

Q. Dr. Culpepper, the immediate question before the Court has to do with the admission of one colored man named Hawkins, who is seeking admission to the College of Law at the University of Florida. Could an objective study and an accurate study be made of just the University of Florida College of Law without taking into consideration the other Colleges at the University of Florida and of the other two State Universities?

A. We think that you would have to study all of the institutions and all of the schools within the institutions, because we feel that it is a broad problem and presumably if admission is allowed to the College of Law under the rulings that would be made, it follows that they would be eligible, presumably, under the same circumstances for admission to other parts of the institution and to the other institutions. Therefore, we made our study comprehensive in taking that position.

Q. Do you consider that the three State Universities are so inter-related from administrative standpoint that what affects one would necessarily affect the others?

A. Yes, I do. I can give an illustration that might be pertinent at this point. When we made the study of the parents of high school seniors we sent out to the Negro parents 4,464 questionnaires. In other words, there were that many Negro parents involved. We received from those Negro parents of high school seniors 1295 replies; and of these 1295, 1115 indicated that they would send their children to one of the three State Universities. Now we feel that the percentages being what they are, that we got very nearly every Negro parent who planned to have his or her child attend a State University. Now, here is the interesting thing about that set of returns. Of these 1115 returns—

The Court: Was that to the exclusion of Florida A. & M.?

A. No, the data I'm about to give will relate to A. & M., F. S. U., and the University of Florida. These Negro parents, now—

The Court: You will permit me to ask this question: you say 1115 said they would send their children to "a State University."

A. "A State University."

The Court: Embracing A. & M., F. S. U., and the University of Florida?

A. That is right.

The Court: But they didn't attempt to say whether they would send them to F. S. U. or University of Florida, or—

A. Well, that is what I'm coming to, Judge Murphee. Of that total number 581 said they would send their children to Florida A. & M.—that is, of the 1115. 205 said they would send their children to the Florida State University, and 369 said they would send their children to the University of Florida. So, roughly half of them, of the total 1155, said they would send their children to either F. S. U. or the University of Florida. Now to return to the point. The point that I want to make is that if this is allowed, then you can see, Mr. Odom, that the problem not only is one with relation to Law, but it also is one with relation to any other part of either of the two white institutions.

Q. Would these figures indicate a shift in enrollment from A. & M. to the white universities?

A. I think that the answer is "yes." Now there is related to it another problem, and that is that in the projection of enrollment, which is shown in the study, we have a tremendous number of students who are desirous of attending each of the institutions and if all these students come—and they will, because we have projected it on a pretty solid base—we will have more students in each of the institutions than we have facilities to take care of them.

Q. I understand, then, that your survey has indicated that all three of the State Universities are already over-

taxed as to facilities to take care of the present enrollment under the present dual system of education. Is that correct?

A. That is correct. The study of this is shown on page 33 of the Study. It shows under projection of enrollment that beginning in the school year of 1959-1960—and this is a very conservative projection—there will be 8,448 students at the Florida State University, as compared with 6400 at the beginning of this current academic year just ending. There will be 14,784 students at the University of Florida, as compared with 10,868 at the beginning of this year. There will be 3,658 students at Florida A. & M., as compared with 2,649 at the present time. Now our studies of facilities and housing, which Mr. Skelton may elaborate upon a little later, will show you that we presently do not have adequate facilities for the present enrollment; so, unquestionably, we are confronted with rather serious problems.

Q. Dr. Culpepper, would a shift on the part of Negro students from Florida A. & M. to the two State white universities further complicate the administrative problems which you now have which are caused by this over-crowded situation?

A. Yes, we think so. We attempted to summarize the various administrative problems which may be encountered by the white universities in the event of desegregation. If you like, I would be glad to run through those, or we can hold it until later when Mr. Skelton, who was the director for the study, may bring it in.

Q. I would like for you to comment in more detail on your observation which I believe you made that a study was made in distinction of achievement levels between the two races.

A. Yes, we have done that. The summary of the comparisons of percentile ranks for white and Negro examinees in the Florida state-wide twelfth grade testing program is given on page 29 of the Study. This is a very interesting study and comparison and bears the carefulest examination by those who have authority

with regard to admission of students to institutions. We took the test results from 105,000 white high school seniors over a period of years and we took the results from 16,743 Negro high school students, and we ran the white percentile rank as the students fall in relation to how they scored on this high school test. It is a test which is a psychological test to get at general ability. We test the knowledge and ability of the individual to perform with regard to English, with regard to Social Studies, with regard to Natural Science, and with regard to Mathematics. What we did was to take the scores of the Negroes and compare those with the scores of the white, and we found—and I won't go into all the detail of it—that 92.4% of the Negro students who were tested—and this is a very representative group—92.4% of the Negroes tested fell below the 40 percentile of the white students tested, and this, usually, we find is the cut-off point or the point at which white students succeed or fail in college work. We took all of the tests, because that's the way to get at it, that were involved and ran an average and the average shows that on the Psychological test and the four subject areas 91.14% of the Negroes fall in the lower 40% of the white students who took the test. If you applied it at the 50 percentile, then 94.44% of the Negroes will fall in the lower half on the scores that whites made. Now what that indicates on the basis of experience is that some better than 90% of the Negroes would be in difficulty academically when they come to the white institutions under present standards. If it operated any other way, then, obviously, there would have to be a lowering of standards in terms of instruction and grade procedure in the white institutions. And we must not let that happen, because we have to maintain our academic standards in the institutions.

Q. Under the present system operating in the institutions of higher learning Negroes do not have to compete against white students. Is that correct?

A. That is right.

Q. And your study there on these tests indicate that some

90% could not compete. Is that a fair conclusion?

A. That appears to be the circumstances on the basis of that study. Of course, we are very interested in our program of higher education and in the public schools, for that matter, to assist the Negroes as rapidly as possible to improve their level in knowledge and understanding in the subject areas and in general ability; but that is a time procedure.

Q. Dr. Culpepper, if the University systems were integrated and the Florida A. & M. University admission standards were identical with those of the white universities, would you care to comment upon the reasonably anticipated effect that that would have on Florida A. & M.?

A. Well, in my judgment it would be disastrous; that is, to the Negro students who presently are attending or who would desire to attend. If the same admission requirements were applied with some 4500 Negro seniors in the State today and if only 10% of them could go above and would go above, as shown by test results, the 40 percentile which might well be the cut-off point, then 450 Negroes of the total number of high school seniors would be eligible under the admission policy to go to college. If you took, say, half of those—the other half not being able to go or not desiring to go for some reason or other—that would be 225, and if you took half of those who might go to the State Institution, then you would come out somewhere in the neighborhood of about 100 young people who would be eligible for admission to the Florida A. & M. University. Now with ordinary attrition and drop-out, if you projected that over a period of four years, beginning with roughly a 100 students in the Freshman year, you could see that in a period of four years the present institution of some 2600 students would have fallen to less than 400 students. * * *

Q. Dr. Culpepper, would you like to comment further upon any administrative problems which have been revealed by this study which you consider of great importance?

A. Well, we have summarized what we consider to be the

chief administrative problems and I assume that Mr. Skelton will go into those later. However, there are one or two observations which I should like to make, if I may.

The over-all tabulation showing the summary of the white groups with regard to questions concerning whether or not we should admit Negroes to the institutions immediately, and variations thereof, appears to me to be quite significant and I think is somewhat indicative of problems that might emerge. The students at the Florida State University and at the University of Florida indicated these replies. These are summaries. This is shown on Table 2, page 2, in the Study. Better than 20%-20.44% of the students said "admit immediately." Of the parents of these students 7.79% said "admit them immediately." Of the alumni 12.43% said "admit them immediately." Of the faculty 37.04% said "admit them immediately." Now that ranges from "admit them immediately" down through to "not admit them under any circumstances."

The second classification was "admit them after a reasonable period of preparation for integration." The students on that particular classification, 43.21% said "admit them after a reasonable period." So roughly 64% of the students said "admit them immediately or after a reasonable period of preparation for integration." Of the parents 22.45% said "admit them after a reasonable period." And so you have something like 30% of the parents saying "admit them either now or within a reasonable period." The alumni, 31.05% said "after a reasonable period," or roughly 43% of them. And the faculties, 44.46% said "admit them after a reasonable period," or roughly about 81 or 82% — about 82% said "admit them now or after a reasonable period.

Now look at the variation as between parents on the one hand, students on the other, and then a third variation would be the faculty reaction. And as you interplay those reactions you can get all sorts of complexities in terms of reactions. You can go over to the other side and show that those who say "delay admitting them as long as we legally can," 14% of the

students, roughly, said "delay as long as we can," and 24%, roughly, of the parents said "delay as long as we can." Twenty-three per cent of the alumni said "delay as long as we can." And about 12½% of the faculty said "delay as long as we can." Of the students, 21%, roughly, said "don't admit them under any circumstances." So there are roughly 35% of the students who have very serious doubt about admitting the Negroes and who want to delay as long as they legally can or not admit them under any circumstances. The parents, 44.06% say "do not admit them under any circumstances." So you have some 68%, or a substantial majority of the parents, who are very doubtful about this process of admission of Negroes to the institutions.

And the alumni, 31.46% say "admit them under no circumstances," which means that roughly 55% of them take the same position as that group of parents. And of the faculty 3.66% say "under no circumstances admit them," or roughly 16%. So, if you will look at that and see that a substantial majority of the parents are gravely concerned about this and feel they should not be admitted, a majority of the alumni feel the same way, a substantial group of students, some 35%, a little better than a third, feel the same way, it is reasonable to suppose that out of that complexity of point of view in this matter of social change you could expect reactions and repercussions that would be disruptive.

Q. Did you find the same attitudes expressed to a greater or lesser degree on the part of the parents of high school seniors who will be coming to the State universities next year?

A. The attitude of high school seniors or the parents of high school seniors, 5.32% of them said (this is shown under Table 4, page 2, Part II of the Study), that they felt they should be admitted at once. This is in comparison with 7.79% of the parents whose youngsters are in college. 16.09% said that they felt that they should be admitted after a reasonable period of preparation, in comparison with 22.45% of the parents whose children are in college.

You see these percentages are running lower in the high schools. 16.66% said that we should delay as long as we legally can, in comparison with 24.28% of the parents of children in college who said we should delay as long as we legally can. And 60.18% of the parents of high school seniors said we should not admit them under any circumstances. So if you add the 60%, roughly, and the 16.66% you come up with about 77%, roughly, of the parents of high school seniors who are very doubtful about this process. Of the parents of college students that percentage is about 68%."

The above excerpts from the testimony given on these matters and other quoted material are by no means comprehensive. An examination of the complete record of facts and testimony considered by the Supreme Court of Florida in this case is necessary to a full understanding of the magnitude of the problem at hand.

We submit that an objective study of these factual considerations will reveal that the Supreme Court of Florida was correct in its conclusion that it could not at this time order the petitioner to be admitted to the University of Florida without causing public mischief.

SUMMARY FROM THE SURVEY REPORT OF
ADMINISTRATIVE PROBLEMS WHICH MAY BE ENCOUNTERED

1. Provision for housing of Negro students
2. Administration of an increased number of course drops by students indicating that they would not be in the same class with a Negro (The magnitude of this problem will depend on the number of Negroes admitted and the influence of the parents on the students.)
3. Need for additional time and personnel to administer the program of more rigid entrance requirements
4. Vigilance on the part of administrators and counsellors to prevent racial incidents which may occur because of the admission of Negroes.

5. Restriction of campus food service facilities to students, parents, faculty, out of town guests, and residents of the communities who come as guests of individuals associated with the universities

6. Inspection of off-campus housing to protect the health and welfare of all students

7. Replacement of the faculty and staff who would resign because of integration

8. Arrangement for chaperones for university social events who would not object to attending such affairs where Negroes are present

9. Development of understandings on the part of alumni of the universities to insure continued loyal and enthusiastic support

10. Adjustments in food service operations to prevent deficits resulting from loss of student patrons refusing to eat where Negroes are permitted

11. Counseling of students to prevent them from engaging in activities to discourage Negroes from attending classes (Faculties may have to assume more responsibility in maintaining order in classrooms and be ever alert to possible disturbances on campus.)

12. Provision for care of Negroes in the student health services

13. Modification of regulations governing swimming classes and other sports

14. Review of present offerings at the Florida A. & M. University to eliminate unnecessary and uneconomical offerings (e.g., Law, Pharmacy, Nursing Education, Graduate Agriculture.)

## CONCLUSION

We know that the petitioner in this case, his legal counsel and the organization for whose objectives he serves as a symbol, sincerely and deeply feel that the Brown decision was right as a matter of law and that racial integration of public education is desirable.

We know that they feel these things so strongly that they are either unable or unwilling to accept the fact that an overwhelming majority of white citizens in Florida who are equally sincere do not agree but rather are convinced that a legally coerced association between the races is evil and that their own constitutional rights in this respect have been violated by the Brown decision.

The real difficulty is grounded in the fact that the Brown decision has contradicted the sincere beliefs of a majority of Florida citizens as to their basic rights and freedom. They therefore dissent.

It is true that freedom of association or the inherent right to choose one's associates is not spelled out in the Federal constitution. We think the reason for this omission is obvious. There has never been a question as to this right in the minds of free men. The right is so apparent that the necessity for spelling it out would no more occur to a constitutional draftsman than the need for writing in a guarantee of the right to have children.

Although the Federal constitution is silent on this subject, we can understand this Court's ruling in effect that the right of freedom of association is so inherent that any law, state or federal, which abridges this right is contrary to the basic precepts of our form of government which is

designed above all else to preserve the dignity, importance and freedom of its individual citizens.

Such a ruling theorizes that a law which forbids two men from talking together, working together or studying together if they want to do so is clearly repugnant to the culture, philosophy and law which has slowly evolved through the centuries in western Europe and culminated in western civilization as we know it today in this land.

But the Siamese twin of such a law, a court order which compels association of persons against their wishes, in schools and colleges and which ignores their intense opposition, is equally repugnant and possibly even more disastrous to human dignity.

The foundation of the human right to enjoy the association of other human beings is the mutual respect and affection of both parties to the contract.

Without this mutuality of feelings in an association compelled by law, friendship is dethroned by hatred—respect erodes into contempt and the individual's freedom of choice is usurped by the state. Our American system of education both in public schools and universities inescapably involves social intercourse, friendship, free and voluntary association in every area of school life of persons unencumbered by compulsive antagonisms. It involves both psychological and philosophical considerations which should be freed of this element of compulsion either for or against association.

In short, the ruling of this Court which seeks to preserve the right of individual citizens to choose their friends and associates in public schools and colleges by striking down laws which enforce a cleavage between races must not, if we are to avoid disaster, be turned into a two-edged sword which seeks to compel an association by law which is unwanted and strongly resisted by either or both races.

This, we think, is the sword which the petitioner is asking this Court to place in his hands. Hawkins' legal rights as a Negro have already been established by this Court but the Supreme Court of Florida is asked to go a step farther and direct the petitioner's *immediate* admission to the University of Florida despite conditions which now prevail in this state. This we believe is unrealistic and will not result in a successful implementation of his legal rights.

The factual problem now confronting us is properly one of administration, not of law. The law cannot alter the minds or mores of men in a free nation and the dilemma is concerned with the conflict between the law and mental attitudes. We know that these conflicts exist and believe that we have given this Court abundant evidence of a solid wall of opposition to integration in Florida schools and colleges which justifies the Supreme Court of Florida in delaying its writ in the interest of the general peace and welfare of this state.

We respectfully request that this Court take realistic notice of the compelling factual reasons which require the Supreme Court of Florida to withhold its writ of mandamus in this case at this time and that this Court will continue to recognize, as it has done in the past, the historic right of the highest court of an independent sovereign state to exercise a sound judicial discretion as to the date of the issuance of its process in order to prevent a serious public mischief.

For these reasons, we respectfully request this Court to deny petitioner's request for a writ of certiorari and a

direct order of this Court compelling his admission to the University of Florida.


RICHARD W. ERVIN
*Attorney General*
*State of Florida*

RALPH E. ODUM
*Assistant Attorney General*
*State of Florida*

JOHN J. BLAIR
*Assistant Attorney General*
*State of Florida*

WILSON W. WRIGHT
*Special Assistant Attorney General*
*State of Florida*


## CERTIFICATE OF SERVICE

I do hereby certify that copies hereof have been seasonably furnished by registered mail to Robert L. Carter, Esq., Thurgood Marshall, Esq., and William L. Taylor, Esq., 20 West 40th Street, New York City, New York, Attorneys for Petitioner.


JOHN J. BLAIR
*Assistant Attorney General*
*State of Florida*

## APPENDIX A

SUPREME COURT OF THE UNITED STATES

**No. 624.—October Term, 1955.**

THE STATE OF FLORIDA, *ex rel.*
VIRGIL D. HAWKINS,
Petitioner

v.

THE BOARD OF CONTROL, *et al.*
On Petition for Writ of Certiorari to the Supreme Court of Florida.

**(March 12, 1956.)**

Per Curiam.

The petition for certiorari is denied.

On May 24, 1954, we issued a mandate in this case to the Supreme Court of Florida. 347 U. S. 971. We directed that the case be reconsidered in light of our decision in the Segregation Cases decided May 17, 1954, *Brown v. Board of Education*, 347 U. S. 483. In doing so, we did not imply that decrees involving graduate study present the problems of public elementary and secondary schools. We had theretofore, in three cases, ordered the admission of Negro applicants to graduate schools without discrimination because of color. *Sweatt v. Painter*, 339 U. S. 629; *Sipuel v. Board of Regents of the University of Oklahoma*, 332 U. S. 631; cf. *McLaurin v. Oklahoma State Regents for Higher Education*, 339 U. S. 637. Thus, our second decision in the *Brown* case, 349 U. S. 294, which implemented the earlier one, had no application to a case involving a Negro applying for admission to a state law school. Accordingly, the mandate of May 24, 1954, is recalled and is vacated. In lieu thereof, the following order is entered:

Per Curiam: The petition for writ of certiorari is granted. The judgment is vacated and the case is remanded on the authority of the Segregation Cases decided May 17, 1954, *Brown v. Board of Education*, 347 U. S. 483. As this case involves the admission of a Negro to a graduate professional school, there is no reason for delay. He is entitled to prompt admission under the rules and regulations applicable to other qualified candidates. *Sweatt v. Painter*, 339 U. S. 629; *Sipuel v. Board of Regents of the University of Oklahoma*, 332 U. S. 631; cf. *McLaurin v. Oklahoma State Regents for Higher Education*, 339 U. S. 637.

---

## APPENDIX B

### HOUSE CONCURRENT RESOLUTION NO. 174

A RESOLUTION to declare the United States Supreme Court decisions usurping the powers reserved to the states and relating to education, labor, criminal procedure, treason and subversion to be null, void and of no effect; to declare that a contest of powers has arisen between the State of Florida and the Supreme Court of the United States; to invoke the doctrine of interposition; and for other purposes.

*Be It Resolved by the House of Representatives of the of the State of Florida, the Senate Concurring:*

That the Legislature of Florida doth hereby unequivocally express a firm and determined resolution to maintain and defend the Constitution of the United States, and the Constitution of this State against every attempt, whether foreign or domestic, to undermine and destroy the fundamental principles, embodied in our basic law, by which the liberty of the people and the sovereignty of the States, in their proper spheres, have been long protected and assured;

That the Legislature of Florida doth explicitly and peremptorily declare that it views the powers of the Federal Government as resulting solely from the compact, to which the States are parties, as limited by the plain sense and intention of the instrument creating that compact;

That the Legislature of Florida asserts that the powers of the Federal Government are valid only to the extent that these powers have been enumerated in the compact to which the various States assented originally and to which the States have assented in subsequent amendments validly adopted and ratified;

That the very nature of this basic compact, apparent upon its face, is that the ratifying States, parties thereto, have agreed voluntarily to surrender certain of their sovereign rights, but only certain of these sovereign rights, to a Federal Government thus constituted; and that all powers not delegated to the United States by the Constitution, nor prohibited by it to the States, have been reserved to the States respectively, or to the people;

That the State of Florida has at no time surrendered to the General Government its right to exercise its powers in the field of labor, criminal procedure, and public education, and to maintain racially separate public schools and other public facilities;

That the State of Florida, in ratifying the Fourteenth Amendment to the Constitution, did not agree, nor did the other States ratifying the Fourteenth Amendment agree, that the power to regulate labor, criminal proceedings, public education, and to operate racially separate public schools and other facilities was to be prohibited to them thereby;

And as evidence of such understanding as to the inherent power and authority of the States to regulate public education and the maintenance of racially separate public

schools, the Legislature of Florida notes that the very Congress that submitted the Fourteenth Amendment for ratification established separate schools in the District of Columbia and that in more than one instance the same State Legislatures that ratified the Fourteenth Amendment also provided for systems of racially separate public schools;

That the Legislature of Florida denies that the Supreme Court of the United States had the right which it asserted in the school cases decided by it on May 17, 1954, the labor union case decided on May 21, 1956, the cases relating to criminal proceedings decided on April 23, 1956, and January 16, 1956, the anti-sedition case decided on April 2, 1956, and the case relating to teacher requirements decided on April 9, 1956, to enlarge the language and meaning of the compact by the States in an effort to withdraw from the States powers reserved to them and as daily exercised by them for almost a century;

That a question of contested power has arisen; the Supreme Court of the United States asserts, for its part, that the States did in fact prohibit unto themselves the power to regulate labor matters, criminal proceedings and public education and to maintain racially separate public institutions and the State of Florida, for its part, asserts that it and its sister States have never surrendered such rights;

That these assertions upon the part of the Supreme Court of the United States, accompanied by threats of coercion and compulsion against the sovereign States of this Union, constitute a deliberate, palpable, and dangerous attempt by the Court to prohibit to the States certain rights and powers never surrendered by them;

That the Legislature of Florida asserts that whenever the General Government attempts to engage in the deliberate, palpable and dangerous exercise of powers not granted

to it, the States who are parties to the compact have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining, within their respective limits, the authorities, rights and liberties appertaining to them;

That failure on the part of this State thus to assert its clear rights would be construed as acquiescence in the surrender thereof; and that such submissive acquiescence to the seizure of one right would in the end lead to the surrender of all rights, and inevitably to the consolidation of the States into one sovereignty, contrary to the sacred compact by which this Union of States was created;

That the question of contested power asserted in this resolution is not within the province of the Court to determine because the Court itself seeks to usurp the powers which have been reserved to the States, and, therefore, under these circumstances, the judgment of all the parties to the compact must be sought to resolve the question. The Supreme Court is not a party to the compact, but a creature of the compact and the question of contested power should not be settled by the creature seeking to usurp the power, but by the parties to the compact who are the people of the respective states in whom ultimate sovereignty finally reposes;

That the Constitution of the State of Florida provides for full benefits to all its citizens with reference to educational facilities and under the Laws of Florida enacted by the Legislature through the Minimum Foundation Program its citizens under states' rights, all are being educated under the same general law and all teachers are being employed under identical educational qualifications and all are certified by the State Board of Education alike, which enables the people, themselves, in Florida to provide an educational establishment serviceable and satisfactory and in keeping

with the social structure of the state. The people of Florida do not consent to changing state precedents and their rights by having doctrines thrust upon them by naked force alone, as promulgated in the school cases of May 17, 1954, and May 31, 1955;

That the doctrines of said decisions and other decisions denying to the States the right to have laws of their own dealing with subversion or espionage, and criminal proceedings, and denying the States the right to dismiss individuals from public employment who refuse to answer questions concerning their connections with communism by invoking the Fifth Amendment, and denying the States the right to provide for protective "right to work" laws, should not be forced upon the citizens of this State for the Court was without jurisdiction, power or authority to interfere with the sovereign powers of the State in such spheres of activity.

That the Court in its decisions relating to public education was without jurisdiction because (1) the jurisdiction of the Court granted by the Constitution is limited to judicial cases in law and equity, and said cases were not of a judicial nature and character, nor did they involve controversies in law or equity, but, on the contrary, the great subjects of the controversy are of a legislative character, and not a judicial character, and are determinable only by the people themselves speaking through their legislative bodies; (2) the essential nature and effect of the proceedings relating exclusively to public schools operated by and under the authority of States, and pursuant to State laws and regulations, said cases were suits against the States, and the Supreme Court was without power or authority to try said cases, brought by individuals against States, because the Constitution forbids the Court to entertain suits by individuals against a State unless the State has consented to be sued;

That if said Court had had jurisdiction and authority to try and determine said cases, it was powerless to interfere with the operation of the public schools of States, because the Constitution of the United States does not confer upon the General Government any power or authority over such schools or over the subject of education, jurisdiction over these matters being reserved to the States, nor did the States by the Fourteenth Amendment authorize any interference on the part of the Judicial Department or any other department of the Federal Government with the operation by the States of such public schools as they might in their discretion see fit to establish and operate;

That by said cases the Court announces its power to adjudge State laws unconstitutional upon the basis of the Court's opinion of such laws as tested by rules of the inexact and speculative theories of psychological knowledge, which power and authority is beyond the jurisdiction of said Court;

That if the Court is permitted to exercise the power to judge the nature and effect of a law by supposed principles of psychological theory, and to hold the statute or Constitution of a State unconstitutional because of the opinions of the Judges as to its suitability, the States will have been destroyed, and the indestructible Union of Indestructible States established by the Constitution of the United States will have ceased to exist, and in its stead the Court will have created, without jurisdiction or authority from the people, one central government of total power;

That implementing its decision relating to public education of May 17, 1954, said Court on May 31, 1955 upon further consideration of said cases, said: "All provisions of Federal, State, or local law .... must yield" to said decision of May 17, 1954; said Court thereby presuming arrogantly to give orders to the State of Florida;

That it is clear that said Court has deliberately resolved to disobey the Constitution of the United States, and to flout and defy the Supreme Law of the Land;

That the State of Florida, as is also true of the other sovereign states of the Union, has the right to enact laws relating to subversion or espionage, criminal proceedings, dismissing public employees who refuse to answer questions concerning their connections with communism and "right to work" protection, and has the right to operate and maintain a public school system utilizing such educational methods therein as in her judgment are conducive to the welfare of those to be educated and the people of the State generally, this being a governmental responsiblity which the State has assumed lawfully, and her rights in this respect have not in any wise been delegated to the Central Government, but, on the contrary, she and the other States have reserved such matters to themselves by the terms of the Tenth Amendment. Being possessed of this lawful right, the State of Florida is possessed of power to repel every unlawful interference therewith;

That the duty and responsibility of protecting life, property and the priceless possessions of freedom rests upon the Government of Florida as to all those within her territorial limits. The State alone has this responsibility. Laboring under this high obligation she is possessed of the means to effectuate it. It is the duty of the State in flagrant cases such as this to interpose its powers between its people and the effort of said Court to assert an unlawful dominion over them; THEREFORE,

*Be It Further Resolved by the House of Representatives of the State of Florida, the Senate Concurring:*

Section 1. That said decisions and orders of the Supreme Court of the United States denying the individual sovereign states the power to enact laws relating to espio-

nage or subversion, criminal proceedings, the dismissal of public employees for refusal to answer questions concerning their connections with communism; "right to work" protection, and relating to separation of the races in the public institutions of a State are null, void and of no force or effect.

Section 2. That the elected representatives of the people of Florida do now seriously declare that it is the intent and duty of all officials, state and local, to observe, honorably, legally and constitutionally, all appropriate measures available to resist these illegal encroachments upon the sovereign powers of this State.

Section 3. That we urge firm and deliberate efforts to check these and further encroachments on the part of the Federal Government, and on the part of said Court through judicial legislation, upon the reserved powers of all the States' powers never surrendered by the remotest implication but expressly reserved and vitally essential to the separate and independent autonomy of the States in order that by united efforts the States may be preserved.

Section 4. That a copy of this Resolution be transmitted by His Excellency The Governor to the Governor and Legislature of each of the other States, to the President of the United States, to each of the Houses of Congress, to Florida's Representatives and Senators in the Congress, and to the Supreme Court of the United States for its information.

Filed in Office Secretary of State May 2, 1957.

## APPENDIX C

## REPORT OF THE FLORIDA LEGISLATIVE INVESTIGATION COMMITTEE

This report covers the investigations and findings of the above committee, under authority of Chapter 31498, Acts of the 1956 Special Session of the Legislature.

The committee staff began functioning October 22, 1956, gathering documentary and other evidence. The committee held a series of four public hearings. A total of 69 witnesses were heard under oath, and 115 documentary exhibits, all properly identified and authenticated by the various witnesses, were received in evidence. The entire testimony before the committee has been transcribed and consists of 2,087 pages of testimony under oath.

The committee's investigations included a rather large number of organizations, including the National Association for the Advancement of Colored People, the Seaboard White Citizens Council, the Inter Civic Council, Inc., and the Dade County Property Owners Association. Sworn testimony was taken on all of the above and a rather large number of other organizations came to the attention of the committee, but due to the lack of time and restricted personnel, it was impossible to make anything approaching a reasonably thorough investigation sufficient to prepare a hearing on.

### NAACP AND NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

The record shows the NAACP to be a corporation, organized under the laws of the State of New York, having four organizational levels. The top level maintains permanent offices in New York City and has a board of directors of approximately 50 people. Directly under this organization are seven regional offices among which are divided the

various states and territorial possessions of the United States. Florida lies within the fifth region, which is composed of the states of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee. This region is known as the Southeast Region. Directly under the regional offices is a state level office called the state conference of branches. Under the state conference of branches are the various local branches which consist of the local membership in the various cities and counties of the state. All branches are chartered by the national office in New York.

Prior to 1942, all of the activities of the NAACP were carried on under one corporate entity. Since that time, it has been carried on under two separate corporate entities, the second one being the NAACP Legal Defense and Educational Fund, Inc., organized under the laws of the State of New York. This corporation is set up in such a manner that donations to it are deductible on the income tax returns of the donor. Although these two corporations are separate legal entities, they act with such perfect concert that there can be no doubt that the NAACP Legal Defense and Educational Fund, Inc. is in fact the mere alter ego of the NAACP.

The NAACP has formulated a plan calling for the full, complete and absolute integration of the races in this country in every phase of American life by 1963. This includes the removal of all legal prohibitions against intermarriage of the races.

The NAACP is directly responsible for securing the decisions of the United States Supreme Court holding separate but equal facilities in education, both elementary and at the higher levels, to be in violation of the United States Constitution. Having secured these decisions, the NAACP has set itself up as a sort of executive arm of the federal

courts to execute the integration decrees of federal courts which, standing alone, are not self-executing under the law.

In order to accomplish its aim of complete integration, the NAACP has promulgated a very concrete and highly effective set of plans. A national legal department is maintained in the New York offices of the Legal Defense and Educational Fund, Inc. A legal staff is likewise maintained at the regional, state conference, and branch levels. It is the primary duty of the various legal staffs to accomplish the aims of the NAACP by carrying on integration litigation in the cases furnished by the various local branches of the NAACP.

The national office maintains a very rigid and strict discipline over the paid employees of the NAACP and likewise over the various local and state offices and branches. A highly effective chain of command and communication has been maintained throughout all levels of the organization with the national office. Directives from the national office are sent periodically to all local branches outlining in detail the steps to be taken in the various phases of American life to accomplish the ends of the NAACP. A carefully planned program of attack, legally, legislatively, and publicity-wise, is being executed in the following areas:

1. In public education
2. In public recreation
3. In public transportation
4. In public health
5. In public and private housing
6. In all fields of employment, both private and public
7. In all governmental agencies

At the present time, the main emphasis is being placed on public school facilities. Directives, sent to all branches in the south, outline in detail the steps to be taken by the

local branches to effectively integrate the public schools of the south. The steps are as follows:

1. *File at once a petition with each school board for integration.* (Sample petitions are sent with this directive.)

2. Follow up the petitions with periodic inquiries to the board to determine the results.

3. Begin educational meetings on desegregation with emphasis on the fact that the matter is in the hands of the federal courts.

4. Organize the parents of the community and *prepare them and their children to become plaintiffs in law suits seeking integration of the schools.*

5. Seek support of individuals and community groups, particularly in the white community, through churches, labor organizations, civic organizations, and personal contacts.

6. "When announcement is made of plans adopted by the school board, get the exact text of the school board's announcement and notify the state conference and the national office at once so that you will have the benefit of their views as to whether the plan is one to provide for effective desegregation. It is very important that branches not proceed at this stage without consultation with the state and national offices."

7. If no plans are announced or no steps toward desegregation taken, *the time for a law suit has arrived. At this stage, court action is essential* because only in this way does the mandate of the Supreme Court that a prompt and reasonable compliance become fully operative upon the school boards in question.

8. At this stage, *the matter will be turned over to the legal department, and they will proceed with the matter.*

Plaintiffs are solicited and, in some cases, people's names are used as plaintiffs without their knowledge. The NAACP finances the litigation in its entirety, the plaintiff having no financial responsibility to the case whatsoever. The financing of these cases is undertaken by the NAACP without regard to the individual plaintiff's ability to pay. Some plaintiff's are people of substantial means, which bears out the testimony of some of the NAACP attorneys that the NAACP is not a legal aid society to render legal assistance to the poverty-stricken. Cases are filed where no proper authorization from the plaintiff is ever executed to the attorney who actually handles the case.

The association directs that no local branch is to enter into any sort of compromise agreement with local authorities for anything short of full integration. In Sarasota, a perfectly agreeable solution to the majority of the colored citizens of that city was offered by the county commissioners for a separate segregated beach. The NAACP would not agree to the separate beach and stopped the proposed settlement which concerned only local citizens of Sarasota.

Pleadings in integration cases are sent to the national legal department for revision and approval before filing, as are briefs. The individual plaintiffs are not allowed to select counsel of their choosing but must accept the NAACP counsel designated by the local branch. The policy of the national office requires that the NAACP have absolute control over all law suits in which the NAACP participates. This effectively shuts off the possibility of compromise on a local level.

In fine, the NAACP is engaged in a gigantic law practice

with the NAACP running up and financing cases and the legal department operating under the NAACP Legal Defense and Educational Fund prosecuting the same. An audit of the NAACP Legal Defense and Educational Fund, Inc. from its inception in 1942 through 1955 discloses that the association made a pecuniary profit on the litigation undertaken by it in every year except the first, when it took a small loss of approximately $1,100.00. At the end of 1955, the audit reveals an ending surplus of $126,689.22.

The funds for supporting these cases are secured from the membership and from soliciting the public at large and other organizations.

Although the NAACP has done business in Florida for many years, the charter of the national association was never placed on record with the Secretary of State, as required by law, until after the enactment of the authority under which this committee was created. No permit has ever been received by any branch of the NAACP or any other part of the NAACP to solicit funds in Florida, although such solicitations have been made for a long number of years.

The record shows five petitions for desegregation of public schools have been filed in Florida pursuant to the directive of the national office of the NAACP above set out. The Dade County petition has been followed up by the filing of a law suit in the Federal District Court by the NAACP on behalf of five plaintiffs. The record shows that all five of said plaintiffs executed the same contract with the NAACP attorney handling the case. Under the terms of that agreement, the plaintiffs are not liable for any costs or attorneys' fees. The attorney bears no responsibility to the five individual plaintiffs. The plaintiffs have absolutely no control over their causes. They cannot even stop their law suit or discharge their attorney. The agreement stipu-

lates, that the Miami branch of the NAACP has all those rights and that the attorney can be replaced only by the branch and is responsible to it alone.

The great bulk of the NAACP's activities, above described, are in the opinion of counsel contrary to the spirit and letter of the canons of ethics and general laws governing the conduct and practice of law; and amount to an abuse of the judicial processes of the courts in which these cases are carried on.

The NAACP, in conjunction with the Inter Civic Council, Inc., whose officers happen to be the local officers of the Tallahassee Branch of the NAACP, maintained financially and supplied the leadership for the boycott movement in Tallahassee. The boycott movement drew heavy financial and moral backing from certain individuals on the faculty at the Florida A&M University. This support included the use of their automobiles in the car pool operation, which the Municipal Court of Tallahassee held to be unlawful and illegal operation in the trial of the Inter Civic Council, Inc. and the 21 individual defendants. Some faculty members were convicted in that case.

Dr. Gore, in September 1956, called the entire staff of the Florida A&M University together and cautioned them against participating in this boycott movement. Certain members of the faculty still persisted in their participation to the extent that Dr. Gore called them in for personal and private conversations regarding their activities in the boycott. In this class, among others, were: I. W. Elliott, Henry W. Warner, Dr. Emmett Bashful, Dr. C. V. Smith, E. D. Irons, Irene Mandexter, M. G. Miles, James Hudson, Dr. H. E. Cobb, Dr. S. S. Lewis, and Paul Lewis. Edwin F. Norwood, Sr. was also active in the boycott.

In the opinion of counsel, the record discloses that certain

attorneys for the NAACP have engaged in unethical conduct in violation of the canons of ethics governing the practice of law in Florida. It likewise discloses the very strong possibility that some of the witnesses before this committee committed perjury. Therefore, it is recommended that a copy of the pertinent testimony be made available to the proper officials of the Florida Bar and the state attorneys having jurisdiction where the hearings were held, with the request that the same be carefully studied and if violations of law or ethics have occurred that proper proceedings be instituted against any such offender.

The Florida State Teachers Association has concerned itself with integration law suits. It, together with the NAACP, has been one of the prime movers in instigating the filing of the Virgil Hawkins case, to which the Florida State Teachers Association has been one of the principal financial contributors. The record shows that Virgil Hawkins and the other plaintiffs involved in this case had virtually no control over the course of this litigation and absolutely no financial responsibility for the same, the case having been handled and controlled entirely by persons and organizations other than the individual plaintiffs.

A much more damaging report as to the NAACP's activities would undoubtedly be dictated by the record except for the fact that all records of NAACP have been secretly removed from the jurisdiction of this state for the express purpose of preventing this committee from examining the same.

## SEABORAD WHITE CITIZENS COUNCIL

The Seaboard White Citizens Council was organized under the laws of Washington, D. C. It has been in Florida only a very short time. The only illegal activity which could be attributed to it, which has come to the attention of the committee, is the attempted burning of a cross by four members of said organization in Miami, all of whom

have been convicted for said act. The executive secretary for the council, Federick John Kasper, was interrogated at length. It is the opinion of committee counsel that Kasper is either an opportunist, or an unstable personality craving the spotlight of public attention, or else he is a "plant", or a "guided missile", as it were, of some other person or organization. His own testimony discloses him to be a violent anti-semitic disciple of the mad poet and treasonist Ezra Pound. This young man has never been a success in any enterprise or undertaking in his entire lifetime until he formed the Seaboard White Citizens Council. Prior to his association with the council, his testimony shows he flitted from temporary employment in one field of endeavor to temporary employment in other fields of endeavor without any indication of any stability or steadiness of purpose whatsoever. His two bookstore operations were financed on monies he succeeded in extracting from two or more women. Each store stocked an amazing quantity of anti-semitic and outright fascist literature. They appear to have been a sort of gathering place for people of fascist leanings, all of whom appear to have been close friends and disciples of the mad poet Ezra Pound. In addition to serving as a gathering place for the above described people and as a dispensary of fascist literature, Kasper's bookstores seem mainly to have served as places for intermixing of the white and Negro races. This perennial business failure has come closer to supporting himself financially through his Seaboard White Citizens Council operation than in any other endeavor in his lifetime.

It is impossible to imagine how this man's ideas, actions and conduct can redound to the benefit of any segment of the people of Florida or the entire south for that matter. In fine, Kasper discloses himself to be an outside inter meddler in the racial problems of Florida and the south, whose motives are highly questionable and whose presence and activities the State of Florida can very well do without.

## DADE COUNTY PROPERTY OWNERS ASSOCIATION

An examination of the entire records, as well as the president and several members of the Dade County Property Owners Association, fails to disclose any unlawful or dangerous conduct on its behalf.

All of the above is supported by the committee's public record. There is, in the files of this committee, a great deal of substantial evidence which, due to the limitations of time, has not been placed in the record. Nor has the staff had sufficient time to conduct the thorough type of investigation which should really be conducted on the organizations above referred to. This evidence embraces a considerable number of organizations to which no reference is made in this report.

Within the last few days, information and sources of information have become available to the staff which tend to show the Communist Party and certain other subversive organizations have made plans to use the racial tensions in the south to set one segment of the population against the other in this country and to thereby help accomplish their aim of world domination. Evidence now available to the staff strongly indicates that the Communist Party has sought to, and to some degree may have actually, infiltrated the NAACP and sought to use it for this purpose. Unfortunately it is impossible to conduct the type of investigation and to hold the necessary hearings to determine the true nature and extent of this situation within the lifetime of this committee.

We regret to report that on February 27, 1957, in a public committee hearing in Miami, Florida, one Allen H. Neuharth of 19220 Northwest Fifth Avenue, Miami, Florida, repeatedly stood in wilful, open, and continued defiance of this

committee and of the Legislature of Florida. He repeatedly declined the lawful instructions of the acting chairman of the committee to answer relevant and lawful questions propounded to him without assigning any lawful excuse for his failure to answer. His testimony appears on pages 1382 through 1420 of the record, inclusive. We feel that the citation and punishment of this witness for contempt of the Legislature is essential to the preservation of the Legislature's right to compel witnesses to appear and testify. We, therefore, are reluctantly driven to recommend that this witness be cited for contempt.

We further recommend that copies of this committee's report be mailed to the Attorneys General of each of the forty-eight states.

Respectfully,

s/ HENRY W. LAND, *Chairman*